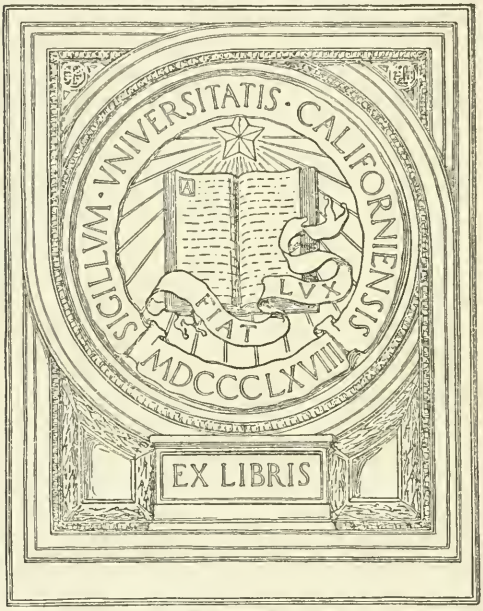
NATIONAL CONSOLIDATION OF RAILWAYS

LEWIS

UNIVERSITY OF CALIFORNIA
AT LOS ANGELES



NATIONAL CONSOLIDATION OF THE RAILWAYS OF THE UNITED STATES

BY

GEORGE H. LEWIS, M. A.
(OF THE DES MOINES BAR)

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1893

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TO

HUBERT A. NEWTON,

PROFESSOR OF MATHEMATICS

IN

YALE UNIVERSITY,

THIS BOOK IS RESPECTFULLY INSCRIBED.

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INTRODUCTORY.

B & N JAN 21 '43 ECONOMICS

MANY books have been printed on railroad problems, and the question may be pertinently asked, Why should another be added to the list? In ascertaining the purpose of any book it is helpful, often, to state in the beginning what ground it is not intended to cover. So the author may say that this is not intended to be a work on railroad law, although many principles of that law are referred to and many cases sustaining them are cited. A multitude more could be added if the intention of the book required their citation. It is not intended as a rate-book, although some fundamental principles of rate-making are discussed. Nor is it intended as an attack upon railroad managers, although some sharp criticisms of the management under the present system are given. The writer knows well that a large proportion of the prominent railroad managers are honorable and large-hearted men in their private associations and relations, and many of them carry these principles into their railroad management. They are thoughtful for their employees, and are earnestly desirous to prevent injury to them, or to passengers carried over their lines. Often they are honestly solicitous, as far as possible, to build up all legitimate business interests along their routes. In many times of financial distress affecting great communities from great fires or floods, failure of crops, or

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other calamities, they have been generous in giving the services of their roads at a nominal rate, or even without compensation, for the benefit of the afflicted localities. Their services to communities and individuals have been often of a high order and have deserved the gratitude of all.

Nevertheless, this has not been true in all cases or with all railroad managers. And the vicious economic principles underlying our present system have often been beyond the control of the officials, however good their intentions might have been. But too often the managers themselves have abused the power held by them, and impaired the interests of their stockholders, and damaged many other business interests, and sometimes other roads, to carry out personal speculations or to accomplish personal ends.

The railroads have performed wonderful works in advancing civilization, and have transformed the face of the country and the methods of doing business. Old times and old methods have passed away and new ones have come in, which on the whole are an infinite gain on the former methods, but with it all have come also grievous wrongs and evils. Whole States have been oppressed and ground down by exorbitant exactions. Fierce railroad wars, due sometimes to unlimited competition, and sometimes, perhaps quite as often, to personal animosities among the managers, or personal speculation, have disarranged the business of great communities, and the resultant loss and the cutting down of wages or requirement of excessive hours of labor have precipitated strikes on great railway systems, which have caused terrible losses to stockholders as well as to the communities where they occurred. In

the field of politics, railroads have very often used the power of their great wealth and influence over their employees in most corrupt and indefensible methods. At some periods they have even dared to corrupt the judiciary and have turned the scales of justice by golden bribes. When they have been united they have oppressed the communities which they were built to serve; and when they have contended with each other in railroad wars they have disturbed the business of these communities by the uncertainty of their rates, and have ruined themselves and their stockholders to carry out personal ends of the managers. With all the untold good which the railroad system has brought to our modern civilization, it has brought with it gross injustice and favoritism and appalling social evils. The author believes that these are due mainly to the unsound principles of social and political economy underlying the present railway system. He does not believe that railroad managers are worse than other men. As has been stated above, they are very often greatly superior to average men, both in intellectual capacity and large-heartedness; but they, like the sections they serve, are swept along by an overwhelming power beyond their strength to control, which develops the evils appearing in our present system through the action of false principles on which it has been constructed. The writer attempts to discuss these questions without prejudice, with malice toward none, and with charity toward all. The issues involved are too vast and too serious to justify an appeal to the arts of the demagogue or to permit harsh criticism or unsparing denunciation. Many discussions of the railway problem point out clearly, and more fully than the author's purpose will

permit, the faults inherent in our present system and manifest in railroad practice. But with few exceptions they attempt no definite solution of the problem. It is comparatively easy to find fault, but to show some practical method by which the evils found can be removed is not so easy. Destructive philosophy or criticism is far easier than constructive methods. Writers on railway subjects rarely propose any definite plan for a reorganization of the railway system, or to reform its admitted evils. Mr. Hudson is a notable exception. He offered a clearly defined plan by which he believed all railroad maladies would be removed. It is doubtful whether his plan, if adopted, would accomplish all that he claimed for it, but he should have the great credit of offering a distinct plan of reform. Mr. Adams favored a let-alone policy, under which the railway system was expected to cure itself by natural development from within, and outside control or interference was condemned. This is a haphazard method, by which, through a kind of probationary state, it is hoped that the Darwinian doctrine of the survival of the fittest will be worked out. That the public were not satisfied with such a policy is plainly manifest from the fact that the Interstate Commerce Act has been passed and the Commission is in vigorous and effective action. But this Act and the Commission created by it are simply regulative and corrective in their powers, neither seeking to go to the root of the difficulty. Mr. Cook believes that this Act fails to regulate the railroads, and that any governmental control will be ineffective. He predicts that consolidation will ultimately come about through relentless wars, the stronger roads absorbing the weaker ones through the merciless operation of

railroad wrecking. But with clear vision he foretells the unspeakable disasters and losses through which only, in this way, such a result can be brought about. The purpose of this book is not to find fault with railroad managers and not to stir up animosity of the public against the railroads, but to propose a definite and distinct plan to remove the evils of the present system. This plan is national consolidation through the formation of a great national railway corporation owning and controlling all the railways of the country, and governed by an organization representing the State and national governments and the stockholders owning the road. The author does not suppose that this plan is perfect or beyond criticism. But it is certain that consolidation in some form must be the ultimate result of the railroad system. If it is not effected under some form of governmental control, it surely will be under private control. And after careful and serious consideration, the writer believes that this plan contains in it at least the germ of a feasible method of national consolidation which will be just to all interests and will establish railroad methods on a sound basis, resting upon which owners and employees, the public and the government, can all harmoniously work together for the general good.

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NATIONAL CONSOLIDATION

OF THE

RAILWAYS OF THE UNITED STATES.

CHAPTER I.

MAGNITUDE OF THE RAILWAY SYSTEM.

Magnitude of the Railway System.—Prevalence of Accidents.—Enormous Revenue and Assets.—Defective Construction and Inflated Capitalization.—Vast Public and Private Donations.—Need of Uniform Control and Supervision.

VERY few persons have any adequate conception of the magnitude of the railway system. That prominent railroad president and brilliant orator, Chauncey M. Depew, in a speech delivered in 1890, declared that railroad securities were the foundation of our business interests, and stated the amount of these securities at more than $8,000,000,000. At first thought this appeared to be an exaggeration due to the quickened imagination of an able speaker under the genial influences of a good dinner.

Mr. Depew's statement related to railroad securities only. Although the figures given by him were prodigious, they fail to give an accurate idea of the immen-

sity of railroad interests. The editor of "Poor's Railroad Manual," who cannot be suspected of exuberance of imagination, estimated the total assets of the railroads of the United States for 1889 at $10,205,493,550. The railway mileage of the United States on June 30, 1891, was 168,402 miles; or, estimating double tracks, yard tracks, and all other subordinate tracks, the total mileage was 216,149. The total capitalization, including bonded debt and stock, was nearly $10,000,000,000. Adding to this $1,000,000,000 for miscellaneous property owned by the railroads, which is not an excessive estimate, and the total assets of the railway system, assuming the stock at par, would amount to the vast sum of $11,000,000,000. This is more than twelve times the present national debt of the United States, and more than four times the national debt at its highest figure. The United States and Confederate governments maintained during the war of the rebellion armies aggregating about 1,750,000 men in one of the greatest wars in all history. But the railroads, in the peaceful avocations of life, ministering to the prosperity of the whole country, employ directly nearly 800,000 persons in their regular operations. It is probable that at least as many more are engaged in avocations directly connected with the railway system, such as rail foundries, locomotive works, car factories, and the miscellaneous industries which depend upon railroading for their support. The railroads, therefore, directly or indirectly, give employment to 1,600,000 workmen.*

* President O. D. Ashley, of the Wabash road, in a vigorous discussion of the injustice to railroads in a pamphlet entitled "Anti-Railway Legislation," estimates the number of persons employed directly or indirectly by railways at about 1,200,000.

The debt and the armies represent the energy of the nation expended in a mighty war. The railroad statistics represent a part of the energy of the same nation devoted to the victories of peace. But these victories of peace, like other victories, have the crimson stain of blood.

During the early days of July, 1863, the nation watched with agony and fear the terrible strife between the Union and Confederate armies at Gettysburg, and the setting sun of July 3d "hung its red cloak on the clouds"—a fitting counterpart to the bloody field below, on which had fallen 32,870 brave men killed and wounded in both armies in the three dreadful days.

But the setting sun of June 30, 1889, closed a year-long contest, in which had fallen by railroad accidents 32,132 persons, many of them delicate women and innocent children. The number of the killed at Gettysburg was 5664, but the number who lost their lives by railroad accidents for that year exceeded these appalling figures by nearly 200.

For a considerable part of the fearful list of casualties, railway management is in no way responsible. The figures include all deaths by suicide on railroads and through carelessness in walking on the tracks. Much attention and earnest effort has been devoted during many years to devising air-brakes, automatic couplers, and other appliances calculated to promote the safety of employees and passengers. But the sad fact remains that the percentage of accidents is increasing year by year, more rapidly by far than the increase

Other authorities make larger estimates, one being as high as 2,000,000. The above figures are not claimed to be exact. No information exists for a strictly accurate estimate.

of business. The reports of the United States Commerce Commission show that for the year ending June 30, 1890, the number of killed was 6334, and of injured 29,025. For the year ending June 30, 1891, 7029 persons were killed and 33,881 were injured—an appalling total of 40,910 casualties resulting from railway operations during that year. This is more than 8000 in excess of the total number killed and wounded on both sides at Gettysburg.

The nation stood aghast at the fearful carnage on the slopes of Cemetery Ridge, but every year a more sanguinary contest is waged by the railroads with the forces of nature, which are too often aided by the negligence or incompetency or greed of man, and little heed is given to this slaughter because the losses are so gradual and so widely distributed.

On many roads and by many managers earnest efforts are being made to remove, as far as possible, all the causes of accident and injury both to passengers and employees; and some roads are already well equipped with safety appliances for cars and protections of various kinds against collisions or other accidents to trains. But as shown by the figures above, in spite of all these efforts the number of accidents has been steadily increasing, and the fatalities from them are certainly appalling. The best efforts of the most intelligent and broad-minded managers avail but little in affording protection for employees engaged in freight service. They may equip every car and locomotive on their own road with the most approved safety appliances, but these amount to little compared with the great mass of freight cars from every portion of the country, and from railroad corporations managed

with too much niggardliness to supply these appliances or too poor to pay for them. The United States Senate has recently passed a bill requiring all railroads to use some approved safety coupler. If this shall become a law, possibly great benefits will result from it in protection to the lives of employees. This law of the nation would accomplish the same effect, in so far as safety appliances are concerned, as would be accomplished by consolidation of all the railroads into a single company under enlightened and liberal management. Many of these accidents occur from defects in the original construction of the railroad, or to a dangerous condition of the road-bed and bridges. This may be due to two causes: either the road may be managed for the purpose of making as large dividends as possible without proper care for its physical condition, or it may from various causes be too poor to be kept in proper repair.

But since any road, however poor and weak, may become a part of the transportation line of strong companies, the public has a vital interest in requiring that all railroads should be kept in physical condition adequate for the traffic passing over them. It is a menace to the safe carriage both of persons and property to allow certain strong lines to make enormous profits from transportation, which must come, in part at least, over lines too weak and poor to keep their physical condition up to a proper point of safety. In this, as in many ways, the healthy members of the railway system suffer from the ills of weaker members. If all railroads in the United States were united into one ownership, with a limitation of dividends to be paid, the earnings of the entire system could be used as a

common fund, to be applied, as the need might be, in keeping all the members of the system, the weaker as well as the stronger, in perfect physical condition.

The aggregate revenue of the United States devoted to all the vast service of the government in its various branches, including enormous disbursements for pensions, is about $500,000,000. The gross earnings of the railroads for the year ending June 30, 1891, were nearly $1,100,000,000, more than double the revenue of the United States. The net earnings were nearly $365,000,000, and the income from investments $135,000,000, the total net income being fully equal to the gross annual revenue of the United States Government. The capital stock of the railroads, June 30, 1890, was, in round numbers, $4,500,000,000, and the funded debt was $5,000,000,000; the debt of the railroads thus being nearly double the United States national debt at its highest figure.

Suggestive as these figures are, showing how completely the railroad system overtops the national government in the magnitude of its income and disbursements and the multitude of persons to whom it gives employment, if we examine the details of the governmental revenue and taxation in a single State, the comparison will be none the less striking. In the year 1890 (the last figures at my command) the total levy of taxes for State purposes for the State of Iowa was, in round numbers, $1.300,000; the county tax, $5,000,000; and the total school tax, over $6,000,000. The entire tax for all purposes in the State was less than $16,000,000.

On the other hand, the gross revenue of the railroads in the State of Iowa for the year ending June

30, 1889, was nearly $45,000,000, more than two and one half times the total taxation of the State of Iowa for all governmental purposes, including municipal and school taxes. Certainly a factor in our social system which has such prodigious power, and levies such enormous tribute upon the business of the country, deserves our most careful and thoughtful consideration. I do not wish to imply that the tribute is unjustly levied, but it is a necessary tax paid by the citizens as an essential element of business, and almost of life itself, under the forms of our present civilization. It is therefore the right of the people, who must pay this, to insist that no more shall be exacted than a fair compensation, and that this tax, like every other rightful tax, should be made to bear equally on all classes of society and all kinds of business.

The magnitude of the gifts to railroads by the Federal and State governments, or by the people through taxation or voluntary contribution, is but little understood. The contributions made by individuals in the form of taxes paid or lands donated in the State of Iowa alone have been estimated by ex-Governor William Larrabee at $50,000,000; by Mr. A. B. Cummins, in his address before the New England society, at $25,000,000. The truth is probably between these two estimates. Mr. Cummins, though speaking for the "Grangers" in an able oration, is and has been for many years a railroad attorney, and probably does not exaggerate these contributions.

The governmental land grants in the Western States have been almost unlimited. Few citizens of Iowa realize how large a proportion of the surface of their own State has been donated to aid in the construction

of railroad lines. The area of the entire State is 35,228,800 acres. The donations to aid in the construction of railroads, including the first grant for the improvement of the Des Moines River (which was largely diverted to railroad construction) have been about 5,000,000 acres. In other words, one acre out of each seven in all of the great State of Iowa has been donated for railroad construction. The area of the State of Connecticut is about 3,100,000 acres, and of the State of Massachusetts 5,300,000 acres. So that the donations of land in the State of Iowa for railroads are almost double the area of the State of Connecticut, and nearly as large as the whole of the powerful State of Massachusetts. These lands, at their present market value without improvements, are worth nearly as much as all the railroads in the State would now cost to build.

In the *Nation* for December 22, 1870, a striking article appeared, entitled, "The Truth about Land Grants," a part of which we quote: "The total area of the United States is in round numbers 2,200,000,000 acres, of which less than one fifth, or about 400,000,000, have passed into the possession of individuals, and over four fifths remain in possession of the country at large. It is the disposal of these four fifths of the entire United States, the disposal of 1,829,000,000 acres of land, or territory nearly five times as large as the total settled portion of our country, that forms the great "public-land" problem which the present generation will shortly be called upon to solve, or at least seriously to consider. . . .

"The first influence affecting the public mind (in opposition to these grants) has no doubt been a con-

sideration of the almost fabulous magnitude of the gifts thus made by the people to certain individuals.

"The total extent of the lands positively given away by the people of the United States, principally to railroad corporations, up to the end of 1869, amounted to 186,000,000 acres, a territory as large as that of Great Britain and France combined. The land actually granted is four times as large as the whole of New England, twice as large as all the Central Atlantic States, including Ohio, and half as large again as the five great Western States of Illinois, Indiana, Iowa, Wisconsin, and Michigan united. All ordinary means of estimating size and value fail before these stupendous amounts. . . .

"The sole incentive to railroad building nowadays is the enormous profits made upon building contracts, which by a strange perversion of moral sentiment have come to be looked upon as legitimate and proper. Railroads are built exclusively for the profit made in building them, and these profits simply consist of the difference between the amount that the road really costs to build, and the amount that the public can be persuaded it is worth and can be induced to invest in its securities."

This article is remarkable, not merely for the stupendous statistics of the land donated which it gives, but also for the much vaster amount then left undisposed of. Less than a quarter of a century has passed, and we no longer have a land problem due to a surplus. Except in Alaska or in arid and practically uninhabitable regions, the United States Government has substantially no public land for settlement. There have been great donations since this article was written, and pre-

sumably it does not include in its estimate the Texas land grants, which equal a kingdom in themselves. That great State has been most generous to railroad corporations. Up to August 31, 1892, to aid in the construction of 3625 miles of railroad track, land certificates had been issued originally amounting to 38,826,880 acres. But nearly 4,000,000 acres had been forfeited for one cause or another. This, however, still leaves remaining the enormous area of 34,900,000 acres donated to railroads by this one State.* These figures are so immense that their meaning can with difficulty be understood. A few comparisons may aid in their comprehension. The land grants of Texas in aid of railroads are equal in area to the entire State of Iowa. They would make eleven States as large as Connecticut or six States as large as Massachusetts. The population of England is over 25,000,000, but the area on which this vast number of people dwell is 2,500,000 acres less than the area covered by the land grants of the State of Texas to railroads.

That distinguished political leader James G. Blaine, in his noted debate with Gladstone on Free Trade and Protection, says: "If all the advances to railway companies, together with the outright gifts by towns, cities, counties, States, and nation, be added together, their money value would not fall short of $1,000,000,000." † So astonishingly great, so unparalleled, has been the generosity of the American people toward these great corporations. But this generosity, though magnani-

* My thanks are due to Hon. W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, for these figures.

† *North American Review*, January, 1890.

mous, was not always just or wise. Nor was it received and used in the best way for the public weal.

As has been well said by the Interstate Commission, "The pressing demand of the people for the facilities of rail conveyance incited numerous enterprises which ought not to have been undertaken. In the eagerness to secure the benefits of railroad transportation an unwarranted premium was offered to those who would furnish it. Enormous grants of public lands, donations of private property, and endless obligations in the way of county, town, and municipal bonds were freely and often inconsiderately given to aid the extension of railway lines into remote districts and undeveloped regions. The recently settled lands were mortgaged, and the future discounted without reserve to gratify the passion for these public highways. They were built in many instances where little traffic existed, and in anticipation of business which could not reasonably be expected for many years. The energy thus exhibited was prodigious, but much of it was misdirected. The capital obtained for many of these schemes was secured upon conditions and coupled with exactions which greater prudence would have avoided; while lavish expenditure and reckless management added to the evils of premature construction. The result in many cases was a capitalization far exceeding the cost of the properties, and a system of railroads vastly greater in carrying capacity than the traffic furnished for transportation." *

The services of the railway system in the development of our country have been inestimable. In spite

* "Sixth Annual Report of the Interstate Commerce Commission," p. 1. I am indebted to Edward A. Moseley, Esq., secretary of the Commission, for an advanced copy of this report.

of conflicting interests, the transportation of both passengers and freight is practically unlimited, and wherever competition exists the rates are very low. The difficult grades and rocky barriers of the Eastern States have been conquered by lavish expenditure and superb engineering, while the great plains of the West have been penetrated by the highways of steel, often far in advance of settlement, bringing the remotest sections of the new States into quick communication with the civilization and wealth of their older sisters. No thoughtful man can fail to appreciate at their real and great value the achievements of the railroads, or to honor the energy and ability which have made these victories over nature possible.

Nevertheless, some grave defects have been developed. Many and serious imperfections are due to the want of governmental supervision in the inspection and construction of the railroads, particularly in later years. Some of the earlier roads were constructed while it was supposed to be necessary that the stockholders should actually invest something in the construction of the line, and when it had not yet been considered great financiering to load a railroad with all the bonds which could be floated, besides an amount of stock itself often in excess of the entire cost of the line. But in later times new methods have grown up which are a damage not only to the public, but particularly to the bond and stock holders, and to the railroad lines themselves. One of these methods is the creation of a new corporation called a "construction company," which usually consists mainly or wholly of the promoters and managers of the new road. These men controlling the railroad company make a contract with

themselves as a construction company to build the proposed line for such a price as may be agreed upon.

It is, of course, presumable that some of these contracts may have been carefully made for the protection of the railroad company, but experience teaches that when men make a contract with themselves to sell property to a third party, the interests of the latter are not as a rule well looked after. However, the arrangement is such that any profit the construction company may make is divided among the managers, and the line is turned over to the railroad corporation at the contract price, instead of its real cost. An illustrative but not at all exaggerated case may be cited:

"An inside ring issues stock certificates to the value of $1,000,000, on which perhaps $100,000 is paid in. They then publish their prospectus, and place on the market $2,000,000 of bonds at 80, reimburse themselves for the $100,000 advanced by charging the moderate commission of five per cent. for services in placing the loan, and have at their disposal $1,500,000 cash. These same directors now appear as a construction company, and award themselves a contract to pay $1,500,000 for work which is worth $1,200,000 only. The road is finished, and probably does not pay interest on its bonds. It passes into the hands of a receiver. Possibly the old management may have an influence in his appointment. At the worst, they have got back all the money they put in, plus the profits of the construction company; in the case supposed, three hundred per cent. The bondholders, on the other hand, have paid $1,600,000 for a $1,200,000 road."*

* Prof. Arthur T. Hadley in "The American Railway," p. 354.

In ordinary cases of private contract where there are two parties to the bargain, the public is not interested, although even in these cases it will interfere to prevent actual fraud.

But with railroads it is wholly different. The public is interested—indeed, has the most vital interest in every line constructed. The public must pay the traffic rates. Therefore it is interested to have the road built as economically as possible, so that it may not be unduly taxed for its support. Life and property are entrusted to its keeping by the public. Consequently the public has the most profound interest to have the line built as wisely and safely as may be. Finally, the public in the majority of cases owns the road, and to get a fair return on its stocks and bonds has a vital interest in its original construction and its prudent and wise management. From this point of view it will be seen that the interests of the public who use railroads and the public who own them are harmonious. Another of the damaging methods of railroad construction which has grown up under our let-alone system is the building of so-called "feeders" to some important trunk line. Adroit manipulators obtain control of some prominent road which is well established and prosperous. Then multitudes of branch lines or feeders are constructed and unloaded upon the main road, usually at a price far in excess of the real value or cost of these lines. A former manager of a prominent southwestern line, where this policy had been carried out, declared that he had made by this system more than $30,000,000 for the promoters of the road. To be sure the road broke down and had to be "re-organized," but there is no record that restitution was made

to the stockholders for the disasters due to this fit of railroad indigestion. In the construction of a certain Michigan road, one man, who was prominent both in the railroad company and in the construction company which built the road, and whose profit in the latter company was a half-million dollars, deeming it not honorable to retain this profit, drew his check for the half-million and restored it to the railroad company. But I know of no late instance of such a high sense of honor.

It has been pretty well understood for many years that the railroad right of way, and the road-bed, are obtained from the gifts of private individuals, and from taxes paid by townships and cities as a bonus for the construction of the line, and the road is bonded for enough to put down the ties and iron. Indeed, in some cases, the bonds issued have paid for the entire construction and the taxes, and other forms of bonus have gone into the pockets of the promoters of the railroad. However this may be, as a rule shares of stock are issued to an equal or greater amount than the value of the entire plant, in addition to the bonds already referred to.

Then the effort is made to extract from the business public a rate large enough to pay the interest on the bonds and more or less of dividend on the stock. In other words, the public is charged a double rate for its transportation so far as the capital and bonded debt are factors in making the rate.* That this is an unjust and unreasonable exaction I think no one will question. Some of the details of these transactions are very amus-

* To what extent stock and bonded debt are factors affecting rates is discussed in chapter v.

ing reading. It recently appeared in a case before one of the United States Circuit Courts that a construction company in a Western State contracted to build a certain road for which they were to receive $16,000 per mile in the bonds of the railroad, and $16,000 in its stock; in other words, $32,000 per mile of paper value. It appears that these bonds and this stock were actually issued to the construction company, who exchanged the $32,000 per mile for $11,000 per mile of the five-per-cent. bonds of another company. The members of the construction company who held a minority of the stock came into court and complained that they had received only $10,000 per mile of these bonds, and in this way the facts came to light.

In this case, therefore, it appears that the road has begun its existence loaded with a debt of $32,000 per mile, while its actual cost was $11,000 per mile in five-per-cent. bonds. It would certainly be asking too much of the public that they should buy this road and pay par value for its stock and bonds.

From what has been said it will be seen that governmental control and supervision is needed.

First. In the construction of every railroad to insure honesty, economy, and safety in building its road-bed, bridges, and track. No State should permit the building of any line except under the careful oversight of a competent and honest engineer.

Second. To prevent the issuance of bonds upon a fictitious cost, or of stock unless it represents some actual value, or is accompanied by a certificate that it does not represent actual but only fictitious value.

Third. To prevent the destruction of the value of the stock and bonds of a solvent road by loading it

with a great debt for connecting but insolvent lines or "feeders," with all the possibilities and temptations to the managers to make enormous profits at the expense of the stockholders and the public.

Fourth. To aid all railway corporations which are willing to adopt life-saving appliances in all reasonable efforts to promote the safety of employees and passengers, and to compel such corporations as are unwilling, either through greed or inertia, to join in this most commendable effort.

In later chapters it will be shown that some central and harmonious control of all the railway systems is needed, which shall be uniform and just to all interests, and shall be invested with authority sufficient to bring about the reforms so imperatively needed in respect to stability and equality of rates, and the destruction of the iniquitous practice of local and personal discriminations, with other serious evils appearing in our present railroad system.

CHAPTER II.

RAILROAD MONOPOLY.

Railroad Transportation a Necessity.—Wide Separation of Manufacturing and Agricultural Sections.—Great Superiority of Railroads over Ordinary Highways.—Ownership of Rolling Stock.—From all these Elements comes Railroad Monopoly.

In the complicated interchange of commodities and products which modern civilization has developed, quick and safe transportation between States and cities remote from each other has become a necessity. Hence the railway system has its hands on the business interests of every community, and, indeed, of every individual. It is more closely related to every one of us, certainly so far as financial interests are concerned, than any branch of our government, unless it be the judiciary system. Railroads can make, and often have made, favored communities or individuals prosperous and wealthy, and have ruined others, and this apparently merely at their own caprice.

Railroads have such vast power for good or for evil because they are practically monopolies. It is true all public highways are necessities to the various communities which they serve. But in the case of ordinary wagon roads no monopoly can exist, and there is no power to enrich one community at the expense of another. There are many reasons for this tremendous power which railroads have, as contrasted with ordinary roads. In the case of the latter so little capital

is necessary to construct a road that if an attempt should be made to impose a toll or tax for traveling over it, a dozen near by could be quickly opened. Again, the wagon roads are open to all persons without charge, except in a few cases of turnpikes, and can be used by every kind of vehicle, and these vehicles may be owned by each person using them or may be hired. And in the third place the local community owns these roads so long as they are used for common travel. Moreover, the difference between these roads is so small that no one road has any considerable advantage over another.

But all this is entirely different in case of the railroad. At the very beginning its construction and equipment require an enormous outlay of capital, rendering it practically impossible that any large number of roads should be constructed to serve any community, however populous, and in the great majority of cases only one road can be built. Of the entire number of railroad stations of the United States only about one eleventh have more than one railroad. Besides, the railroad when once constructed is so enormously superior to the best earth road that can be made, that for any considerable distance it at once supersedes the common highway.*

This is shown very forcibly by Charles Francis

* Professor Laveleye clearly illustrates the immense superiority of improved methods of transport. He says: "A horse can carry on its back and on a footpath two hundredweight at most; on a cart and on a macadamized road, two tons; on a canal or by sea, one hundred tons; lastly, by river, that walking road, as Pascal calls it, the bulk of the burden makes no difference, as is seen in the case of the huge timber rafts."—"Elements of Political Economy," p. 117.

Adams, who says: "Some idea may be realized of the wonderful economy which has been attained in the movement of merchandise, from the fact that as a regular thing a ton in weight was moved four hundred and fifty miles from Buffalo to New York for $1.50, whereas in the early part of the century it would have cost $100."* This, however, was said of a period during which a furious war of rates was raging, and they were far below the ordinary standard.

There is an enormous saving in time, and also in charge for transportation, even at the highest railroad rates. And, again, a railroad cannot be constructed in every locality, as is the case with an ordinary wagon road, because it cannot freely go over the hills and down valleys, but must select as nearly level a route as possible. Therefore, assuming that the route selected by the first railroad is wisely chosen, no other road can be judiciously built near it, in the majority of cases. Besides the overwhelming superiority of the road-bed, which is owned by the railroad company, under the present practice though not in accordance with the original idea of railways as public highways the railroad company in the great majority of cases owns the motive power and cars, so that the shipper is compelled not only to use the road-bed because of its superiority, but he must also use the transportation facilities of the railroad company because he can get no other.

The result of all this is that every railroad for the majority of towns which it serves is practically a monopoly. It has the welfare of the community in its control, and can make or unmake the fortunes of individuals, of towns, or of entire States as it may please.

* "Railroads: Their Origin and Problems," p. 167.

"We discover a universal dependence on the railway. Does the reader remind me of other means of communication and transportation? The reply is evident on a moment's reflection. It is a law of political economy that the more perfect highway at once steps into the position of a monopolist with reference to inferior highways. But it needs no law of political economy to teach the farmer or the merchant that for most purposes he must use the railway, or entirely abandon his attempt to gain a livelihood." *

Many able writers have shown with great clearness and force the vital importance of the railway system. Says Charles Francis Adams: "It is of no practical consequence to the community whether difficulties which prevent the work of the farm from going on arise or do not arise between an individual farmer and his laborers. The work of innumerable other farms goes on all the same, and it is a matter of indifference what occurs in the management of the particular farm. So it is even with large factories, machine shops—in fact, with all industrial concerns which do not perform immediately public functions. The community depends upon the railroad for the daily and necessary movements of civilized existence. This fact has to be recognized. For a railroad to pause in its operation implies paralysis to the community which it serves." †

In a brief but forcible article in the *Arena* for January, 1893, Rabbi Solomon Schindler says:

"Since the discovery of steam power and the establishment of railroad systems, all our social conditions have become revolutionized. The prompt transporta-

* Prof. R. T. Ely, *Harper's Magazine*, July, 1886.

† "The American Railway," p. 374.

tion of goods and persons has become one of the essentials and the very mainspring of modern life. Fifty years ago people hardly dreamed of a possibility of traveling from Maine to California within five days, nor of the immense commerce and the exchange of products that were to be stimulated by means of railroading. When the first railroads were built, people were doubtful about their success, and how could they think that it was the duty of the government to provide for a need that was not felt? Therefore they permitted private enterprise to take charge of it. To-day a strike of railroad employees cripples the business of the land and impoverishes hundreds of thousands of people. In fact, if our railroads should suspend business for a month, a calamity would befall us greater than any war or epidemic would bring."

No writer has shown the necessity of the railway system more picturesquely or vigorously than Chairman A. B. Stickney of the Chicago & Great Western Railway. He says: "Railway transportation, under present conditions, is to the industrial world what the atmosphere is to the physical world: it pervades and is essential to all industries. As in the physical world no man or beast, no plant or shrub, can refuse to breathe the air without death ensuing, so in the industrial world no industry and no human being can refuse railway transportation except under similar penalties. . . . Who would consent that a few men should have the power to dictate upon what terms the air should be breathed? It is idle to talk about railway transportation being a mere article of commerce, owned by the company, 'who, as such owner, may sell it or not, as it may see fit, or, if it elects to sell, may demand

such price as it chooses or can obtain.' It is nonsense to call that merchandise which no man can refuse to purchase." *

General E. P. Alexander becomes fairly poetic in his enthusiastic encomium upon the work of the railways. He says: "The world was born again with the building of the first locomotive and the laying of the first level iron roadway. The energies and activities, the powers and possibilities then developed have acted and reacted in every sphere of life, social, industrial, and political, until human progress, after smoldering like a spark for a thousand years, has burst into a conflagration which will soon leave small trace of the life and customs, or even the modes of thought, which our fathers knew. But in it all the railroad remains the most potent factor in every development. By bringing men more and more closely together, and supplying them more and more abundantly and cheaply with all the varied treasures of the earth, stored up for millions of years for the coming of this generation, it adds continually more fuel to the flame it originated. And as it is necessarily reacted upon equally by every new invention or discovery, and by all progress in other departments of human activity, the demands upon it, and its points of contact with every-day life, are still increasing in geometrical progression." †

The prodigious expansion of our nation in territory and its rapid increase in population would have been impossible without the aid of railroads. The teeming multitudes of our great cities and the congested population of our manufacturing States, crowded far be-

* "The Railway Problem," by A. B. Stickney, pp. 31, 32.

† "The American Railway," p. 149.

yond the measure of local food production, could not be sustained without rapid and cheap transportation. The great manufacturing industries of the country as now located could not be carried on without the untiring service of the twin genii of steam and iron lending their mighty energies to the vast toil of transporting raw material and coal to the mills, and carrying away the manufactured products, to be scattered by swift coursers over the length and breadth of the land. That the crowding together of manufacturing industries mainly in one section, leaving the rest of the nation to agriculture, is not an ideal social condition, and that the present method of hauling food and raw materials hundreds of miles in one direction and manufactured products hundreds of miles in the opposite direction involves vast economic waste, may be granted; and so it may be granted that the railway system is largely responsible for bringing about the conditions of society which promote and require this wasteful method. But all these concessions only emphasize the absolute necessity of the railway system under present conditions, and deepen our comprehension of its immense service to modern society. This system is the vital air of our great business enterprises and the life of great cities and States. It ministers to the leisure and enjoyment of the rich and aids in the health and recreation of the many. Without it modern life would perish and modern society become an irretrievable wreck. But to just the extent that railroads are a necessity do they constitute also a monopoly. Their influence pervades every avenue of business and every phase and class of life. And as no living person can escape their power and influence by any possible effort, charm he

never so wisely, so every individual is affected in his fortunes, his business, his enjoyments, his life, and even his death, by the good or bad management of these mighty forces, and the true or false principles controlling them. It is therefore the right, as it is the duty, of every patriotic citizen to use all means in his power to make this most potent force of modern civilization a minister of good to all the people, and not an instrument of oppression or of the personal aggrandizement of a few at the expense of the many.

CHAPTER III.

THE RAILWAY PROBLEM ARISES FROM PRIVATE OWNERSHIP OF RIVAL ROADS.

"The Railway Problem."—Evils of Private Ownership of Rival Roads.—Natural Law of Trade.—Advantages of Consolidation.—A Single Rolling Stock Company.—The Reading Combine.—Unlimited Tickets.

REFERENCE has been made in the preceding chapter to "The Railway Problem," by A. B. Stickney, formerly president, now chairman of the Board of Directors of the Chicago & Great Western Railway.

The publication of this work by so eminent and able a railroad man as Chairman Stickney marked a new era in the discussion of the railroad question. The question itself is not a new one. Legislatures, courts, and the press have discussed it for twenty-five years or more. Legislative and congressional committees have ventilated railroad methods and exposed their abuses, and federal legislation has brought forth, after prodigious labor, the Interstate Commerce Act as a panacea for all railroad ills.

Presidents Blackstone and Ashley have pictured in strong colors, from the railway standpoint, the injustice of the people to the roads, and the former has shown with great force the necessity of governmental intervention to save the railroads from the people, as he assumes, but in reality from the inevitable consequences

of a false position, considered from an economic standpoint.*

Prof. R. T. Ely has argued powerfully for larger governmental control, while Prof. A. T. Hadley reasons acutely and plausibly for exemption from governmental interference on the logical grounds that railroads are substantially private corporations and as such have an inherent right to be let alone like other private concerns. But Mr. Stickney has shown most clearly and forcibly both how imperative was the need of some controlling power outside of an "autocrat's whim" to secure justice and fair dealing to all persons and all localities, and also how utterly without foundation both in law and justice is the assumption that railways must be let alone by the government because they are private corporations.

Mr. Stickney wrote his book, as he built the "Diagonal road," ably and well. No more vivid picture of the haughty indifference to the rights of others manifested by the old school of railroad managers has ever been drawn than is contained in the earlier pages of this work; and the pity of it is, that it was too true of that time, and is not wholly without force as to certain railroad circles now. But his statement of the low estate to which these magnates have fallen in political matters is not quite accurate in all localities. Indeed, the very center and soul of Iowa politics for many years has been, and still is, a certain railroad attorney of great experience and ability with whom Mr. Stickney is well acquainted. By him congressmen and senators have been made and destroyed, governors and judges of the highest courts elected or defeated, and

* See chapter xi.

some of the foremost papers of the State enriched. To be in his good graces was political life, and to fall under his ban was defeat and death.

The picture of the struggle of the railroads with the legislatures and the consequent disgraceful corruption introduced into our political affairs is not overdrawn, and it is worthy of the gravest consideration. Many railroad managers appear to think that in managing voters and legislatures any course of conduct is justifiable.

A local attorney for a certain railroad running west from Chicago, in an election for members of the State legislature, said to a political opponent, showing him a large sum of money, "Now we shall not have to unite with you to beat Mr. B." The legal chief of this man, in talking with Mr. B. subsequently, openly defended the use of money for such purposes. He is, in private matters, an honorable man, and is very able and successful as a practitioner; but how little manifest is the true spirit of that noble profession of the law, which Burke says should be a "second priesthood, ministering at the sacred altars of justice."

In the chapters on "How Tariffs Grew" and "Competitive Tariffs" the author shows most strikingly the hopeless confusion, uncertainty, and injustice of the present system of rates. In the latter chapter he wrestles in a masterly way to find the law controlling these matters, which law, he is sure, exists, but he does not yet apprehend it. All sorts of efforts have been made through variously organized associations to preserve rates, but all have proven failures, and our author says, "This should be attributed not so much to the want of good faith as to the overpowering force of the

law controlling them, which is as yet undiscovered, or at least is not fully understood." Perhaps it will aid to clear thinking if we ask why are differential (route) tariffs made? Why do competitive tariffs exist at all? Obviously because the railroads have not a single interest, but as many conflicting interests as there are separate and opposing corporations. If all the lines were owned by one corporation, all the complexity and injustice of differential and competitive rates would vanish and all traffic would go over the easiest and most natural route, instead of being diverted, at great waste and expense and constant warfare, over larger or heavier routes, or retained by the natural route only by ruinous "cuts" in rates.

In a later chapter the writer shows more fully the advantages of national consolidation, and suggests a plan, believed to be feasible and practical and just to all interests, through which consolidation may be accomplished.

It is sufficient here to show clearly the source of all this trouble about rates, which lies in the utterly wrong, vicious, and false principle of private ownership and control of conflicting railroads. These, as Mr. Stickney has clearly shown, are, in a sense, little sovereignties, or, as I may say, fragmentary States. And as they are constantly at war with one another, we have the pitiful spectacle of a civil war constantly raging within the nation, at vast cost yearly of material resources and even of life.

The law which Mr. Stickney looked for and saw dimly, but failed to clearly grasp, has two sources or sanctions, the first arising from natural conditions and laws purely, and the second from the principles of so-

ciety as aggregated into political communities and expressed in the law of taxation.

The natural law will be briefly discussed here. Trade in all countries and through all ages seeks the easiest path from the producer to the consumer. The history of a hundred generations shows great cities which have grown rich and powerful along the line, or at the termini of some great line of transportation, sinking into decay and ruin when a nearer or easier route is discovered. Commerce, like water, seeks the lowest level. It rebels at unnatural restrictions. Temporary obstructions may be put in its way, just as one may dam a stream, but sooner or later, over the dam or through its ruins, the stream will find its natural channel. Now of several roads running from Chicago, let us say to New York, one may be the straightest, have the least grades, and be the best built and equipped. Other conditions being equal, this, then, is the natural route for all traffic between these two points, and whatever rate will pay this road the actual cost of transportation (including temporary and permanent repairs), and a moderate compensation for the capital actually employed, would be the normal rate between these cities, the standard to which all will inevitably tend, in spite of differential rates, traffic associations, or any other artificial conditions whatever.

If longer or harder routes fall below this they will sooner or later become bankrupt. Those roads which make a rate in excess of this normal rate will lose their traffic. The manager of the shorter and better route knows he can make all expenses and a reasonable profit by doing the business at the normal rate, and the shippers know it, too. Neither he nor they will long

allow a diversion of the trade to longer and more uncertain routes, especially at a higher rate. Hence the discontent and chafing by both parties, which is palliated by secret rate-cutting or breaks out into open repudiation of the unnatural agreement.

But here it may be said that a bankrupt road is the most dangerous competitor. This is true to a certain extent and for a limited time, but it would seem that too much stress has been laid on this element by some writers. The evil is but temporary, the equipment and road-bed are soon destroyed, the service becomes unsatisfactory and dangerous, and the company ceases to be a competitor, unless reconstructed at great expense, when substantially the old conditions reappear.

This is the law, which, acting on natural principles, constantly bears down the rates, baffling all artificial devices to keep them up, and disrupting the most carefully planned traffic associations before they are fairly in working order.

To the almost insoluble problems arising from the attempt to fix rates under the conflicting interests of our present system Mr. Stickney brings the power of his large experience and well-known ability. But while his discussion is a large advance on the present hopeless chaos, yet it is far from satisfactory, owing to the almost infinite complexity of the elements as they now exist. Let us suppose, however, that all the roads should be under one ownership and control, and the problem is reduced to the comparatively small one of differential rates on commodities only. To any one familiar with the subject it will be at once seen that almost all the difficulties are removed and the problem becomes easy of solution.

Mr. Stickney's discussion of rates, generally, with the suggestion of a "standard average rate," is exceedingly valuable and useful. The standard average rate is the most practical scheme to meet the immediate difficulties of the railway system which we are aware of. But this, like all former devices for the same purpose, will be found to be a temporary relief only, and not a cure. The real source of the evil will not be reached by such expedients.

The author shows most clearly, by copious citations of leading authorities from Vattel to the present time, that the construction and maintenance of highways is an attribute of sovereignty and that railways are our modern highways. He follows the decisions of many courts in considering the railroads as agents of the State to whom has been farmed out a certain portion or subdivision of sovereign attributes. But the national and State governments are themselves but agents, exercising delegated power only, and it would have been wiser if they had remembered the fundamental legal maxim that delegated power cannot be delegated. Moreover, in all discussions on this subject it must be borne in mind that a sovereign power cannot permanently divest itself of any attribute of sovereignty except by voluntary and total dissolution.

Assuming the principle that railroads are performing duties pertaining to sovereignty as conceded, the author makes two logical and necessary deductions:

First. That railroad rates and charges are a species of taxation.

Second. That like all taxation these rates must be uniform and equitable for all places and persons under similar conditions. Nothing more radically different

from the old ideas of railroad management could be imagined.

But under the present system of private ownership in competing roads, each struggling for some artificial advantage over the others, there are two insuperable objections to uniformity and justice. The first is that there are hundreds of little sovereignties all over the country fixing the rates of taxation, often varying them on different days, or to different individuals on the same day, through local or personal discrimination. And second, the private capital invested in these competing roads demands "a fair profit" for its use. But "profit" is not a recognized principle in modern taxation. Under the Roman system it was, and the "publicani" plundered cities and ruined provinces to make a fair profit on their contract to pay the taxes of the state. The first difficulty Mr. Stickney would overcome by having the national government fix and enforce the rates, which should be, as far as possible, uniform and equitable. This would be, if well done, a great improvement on the present system. But it would be exceedingly difficult to fix such rates, and impossible to long enforce them, because they would be working against the natural laws of trade, as shown above.

It is impossible to permanently cure the evils arising from the conflicting interests of the capital invested, except by removing the conflict, which can be done only by consolidation in some form. This may be either under private management and ownership, constituting a vast and most dangerous monopoly, or by national ownership of the roads. Consolidation is already far on the way to accomplishment, and is sure to come before long. It is for the people to determine

whether it shall be under national control or whether a few great railway magnates shall hold the business and prosperity of the nation in their hands through their control of our vast railway system. This would make republican government a mockery and a cover for the worst forms of oppression, or a revolution would occur which would destroy all private ownership of railroads.

The economic advantages of consolidation are so great that it is not surprising to find railroad managers constantly striving to enlarge their systems by absorbing or leasing connecting lines. Vanderbilt, whose genius in this direction was remarkable, clearly demonstrated the immense benefits of consolidation of various lines by creating the New York Central & Hudson River System, one of the most complete and perfect systems of railroad communication in the world. This example was speedily followed and carried even to a greater extent by subsequent railroad managers. The economic benefits are so many and so great that the movement for consolidation is steadily advancing. Under the old system, when freight was changed at the terminus of each little road there was not only great waste of labor but great delay as well. Many classes of freight were greatly injured by the delay, and the annoyances to business interests by the slowness of transportation were very great. The saving both of expense and time by through trains is enormous. Moreover, each little road under the old system had its staff of officers and its separate employees. This involved an increased expense for salaries and wages, while at the same time no salary was sufficiently large to command the highest grade of talent. Under the

present system, although consolidation of railway lines is not complete, yet very great economic benefits are manifest, especially in the handling of freight and in the use of cars.

A prominent railroad manager says: "Formerly each railroad used its own cars exclusively, and through freights were transferred at every junction point. This involved such delay and expense that railroads now generally permit all loaded cars to go through to destination without transfer and allow each other a certain sum for the use of cars. Usually this is about three quarters of a cent for each mile which the car travels on a foreign road. This involves a great scattering of cars, and an extensive organization to keep record of their whereabouts and of the accounts between the companies for mileage.

"Now that the gauges of all roads are similar, and competition enforces through shipments, roads are practically making common property of each other's cars, and the detail and trouble of keeping record of them becomes enormous." *

This common use of cars is a very great step forward, and yet there are many disadvantages connected with the present system of ownership by such a multitude of corporations of cars of different construction and with different appliances. Many complaints are made that railroads whose cars are in the hands of some other and possibly rival roads, at the busy season are unable to get back their own cars or obtain others to make up for them. It is quite natural for two roads which are competitors in transportation to desire each to retain as many cars as possible for its own freight

* E. P. Alexander in "The American Railway," p. 158.

during the crowded season. It is a double advantage, bringing revenue to the road which has the cars and to the same extent crippling its rival. If all the railroads of the United States were consolidated into one company, there would be no temptation of this kind. The surplus cars from one section of the country could be massed in another section as the crop necessities of each might demand. Moreover, this would permit free interchange of motive power as well as cars. So far as I am able to learn, locomotives are rarely if ever exchanged between different roads. It will thus be seen that a single consolidated company to furnish rolling stock would be a great step forward. This is forcibly stated by Mr. Alexander.

"It has been suggested that a great step in advance would be to have all the roads in the United States unite, and put all cars into a common stock and let them be distributed, record kept of movements, and mileage paid through general clearing-houses. This would practically form a single rolling-stock company owned by the roads contributing their cars to it. It could gradually introduce uniform pattern of construction, improved couplers and air-brakes, and would concentrate cars in different sections of the country in large numbers as different crops required movement, thus avoiding the blockades which often occur in one section while cars are superabundant in another. Consolidations usually render more efficient and cheaper service than separate organizations can do, and this may come about in the course of time." *

If such consolidation should take the form of a great corporation owning and controlling absolutely all the

* E. P. Alexander in "The American Railway," p. 172.

rolling stock of the country, it would remove much of the waste of the present system and many of its disadvantages and annoyances. But some of the most serious defects would remain. As each road would endeavor to obtain as much business as possible, the temptations to rate-cutting and discrimination which exist now would not be lessened in any degree. As the capital invested in each road under present ideas clamors for as much profit as possible, every agent would strive for all the business obtainable under such a system, just as under the present. Consequently rate wars and secret discriminations, rebates and the long catalogue of inequitable practices prevailing under the old system, would still continue, except so far as the Interstate Commerce Act might exercise some modifying influence. If, in addition to owning the rolling stock, this supposed company controlled also the right of transportation at a fixed toll per ton-mile over each road, making its own rates of transportation, the evils of rate-cutting, discrimination, and secret rebates would be entirely done away with. The owners of the railroad would be in substantially the same position as the owners of turnpikes in days gone by, they supplying the road-bed and receiving a fixed toll by way of compensation. This would constitute a sharp divison between the governmental function of supplying a highway and the business of a common carrier as known in former times. The services of this company supposed by Mr. Alexander would be limited to labor and services performed in the transportation of persons and goods.

But it will at once be seen that such a consolidated company would have an absolute monopoly of all rail-

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road business. It would have no competition, and unless under very close and rigid governmental supervision could make such rates as it saw fit, and exact from the entire country such tribute as it might choose to levy. With the enormous capital it would control, and the immense number of its employees all acting under one head, its power for good would be tremendous, and its power for evil, if used wrongly, infinitely disastrous.

It would promote economy in railroad management beyond any controversy so far as the railroads are concerned.

But whether it would be economical for the business public would depend entirely upon the ideas which controlled its management. If these ideas were based upon "charging all that the traffic will bear," in the sinister sense of that expression, the entire nation would be in its grasp, and commercial slavery would result. Communities or business enterprises which should incur the displeasure of its managers would be ruined beyond redemption, while favored communities or industries in which the managers might have a personal interest would be fabulously enriched at the expense of entire States.

A very significant illustration of the power of consolidation of railroads under private control, and managed for the money that is in them, is afforded by the recent consolidation of railway lines in Pennsylvania and New Jersey, known as the Reading Combine. These roads together control the great bulk of anthracite coal mined in this country. The total product for the year 1892 was 41,800,000 tons. As a result of this combination the price of anthracite coal was raised $1.25 per ton. The combination was not in existence

during the entire twelve months, but had that been the case, by this simple process more than $50,000,000 would have been taken from the pockets of the consumers of this staple and necessary article during a single year. It is true the officers of the railroad contend that mining has not been profitable in past years. It seems remarkable that they should have carried on the business so long at such a loss, but in this case there is a double monopoly, namely, in the mines of coal and in the railroads which transport it. But whatever may be the facts as to previous cost and profit in mining, the alarming fact is that by a simple consolidation of a small part of the railway system the public, which must consume anthracite coal, may be taxed $50,000,000 without having any part in deciding whether the taxation is legitimate or not, and without power to control it except through tedious processes of law, the result of which is uncertain. The amount paid by any one individual is comparatively small; each family may contribute $10 or $20, but the aggregate creates fifty millionaires each year. It is only one more of the many methods which the economic system of our country permits, by which the many are taxed without their consent, and many times without their knowledge, for the enrichment of a few. Those powers and privileges which the people granted with the expectation that they would be used to benefit the public are turned into a gigantic machine to tax the many to give great wealth to a few. Of course this gives prosperity to those who are within the circle of its benefits; but it lays a burden upon every family and every industry which must use anthracite coal.

One of the great benefits to the public from such

consolidation as is suggested by Mr. Alexander, or from a complete and entire consolidation of the railways of the United States, would be regular and fixed values of railway tickets between any two points in the United States, and the possibility of the use of such tickets over any line of road of the same class for the same distance or in any direction. Efforts in this direction made by the issuance of tourist and excursion tickets in which a limited choice of routes is given are very useful and generous under the present organization of the railway system, but having many drawbacks. In spite of the annoyances connected with even the best of these schemes, they show clearly what great benefits would accrue from the possibility of an unrestricted use of such tickets. It is not supposed that rates over all lines, in all parts of the country, would be the same. There must be differences of rates in different localities and along different lines, according to the differences of business and of cost of construction under any possible system. But tickets expressive of any given value could be used, and should now by law be made usable, over any line according to the rate of charge made on the particular line. Some efforts have been made by certain eastern lines in this direction, and the law of Massachusetts, if the writer is not mistaken, requires the interchange of tickets between all lines. But the practical difficulties in the way of this when legislation is limited to a single State, and when the opposing interests of private ownership exist, are very great. In this, as in a hundred other matters, a single system working harmoniously throughout the United States would be an immense benefit and relief to the traveling and shipping public. Many railroad managers, perhaps a

majority of them, are earnestly desirous of bringing about such reforms, and all others which will minister to the comfort and benefit of the public. But they, with all other citizens of the republic, are handicapped by the infinite complexity of the present railway system and its inevitable conflicts of interest under the existing organization. When the great "Industrial Captain" shall arise, who can lead the railroads and the nation out of this present bondage of conflicting interests, he will be worthily crowned one of the greatest benefactors of our nation.

CHAPTER IV.

CONSOLIDATION UNDER PUBLIC OR PRIVATE CONTROL INEVITABLE.

Importance of Right Management of Railways.—Leading Railroad Authorities in Favor of Consolidation, but under Private Control.—Tendency toward Consolidation in all Business Affairs.—Formation of Trusts.—Same Tendency in England.—"The Bankers' Meeting."—The Vanderbilt Lines.—Consolidation in Some Form Certain to Occur.

THE management of railroads is of the highest importance and most essential interest to those who must use the railroads—that is, to every citizen of our country.

But there is another side of the question. Right management of the vast railroad interests is of the utmost importance to those who own the railroads. The $11,000,000,000 of railroad assets form an important part, in some cases the principal part, of the fortune, and even the living, of multitudes all over the country.

They enter largely into the investments of savings-banks, which represent the careful savings of the laboring people, and constitute a great percentage of the accumulated resources of life insurance companies, out of which must be paid to widows and orphans that which shall supply to them the loss of the wage-earner.

Under right principles and correct management the

interests both of the users of the railroads and their owners are harmonious. Any system, whether under the government, or under a board of directors or "a meeting of gentlemen," which does not consider both these interests, or which looks to manipulation for private gain, or to railroad wars to carry out private jealousies or animosities, is a curse both to business interests which must use the railroads, and to the bond and stock holders, who are the real owners of the roads.

In the end, and in a large way, it is as clearly for the interest of the business man that the railroad should earn a *fair compensation* as it is for the stockholder. And conversely, it is equally for the benefit of the bondholder or shareholder that all business men or interests should have quick and safe transportation, at as low a rate as it is possible to offer it, consistently with reasonable compensation. And for both these interests it is of the highest importance that the rate of transportation, both of persons and goods, should be as nearly uniform as possible.

No one will dispute that theoretically one entire system working harmoniously throughout the United States on the principles above stated would be the best system.

That consolidation and harmonious management of railroad interests is desirable is freely admitted by the most prominent railroad managers.

The most adroit railroad manipulator in the United States took advantage of recent financial disturbances in Europe and this country to get a firm grasp upon several of our most important railroad lines in addition to those which he was credited with controlling before these purchases.

In the fall of 1890 Mr. C. P. Huntington, one of the greatest railroad managers and owners in this country, referring to a report that Jay Gould had obtained a hold on the Union Pacific Railroad, and was in favor of uniting all roads west of Chicago and St. Louis under one management, said: "I am in favor of a consolidation and have gone so far as to offer to consolidate. I told the Atchison people I was willing to combine all our respective properties and let them decide on the name for a joint company. The Atchison people have not accepted the proposition, and I cannot say if they will."

In February, 1891, it was reported that Mr. Huntington and Jay Gould were making efforts in the direction indicated above to unite the three great roads which they especially controlled in one system. These three roads are the Missouri Pacific, the Atchison, Topeka & Santa Fé, and the Southern Pacific. This vast scheme if carried out would unite in one system 35,354 miles, more than one fifth of the entire railway mileage in the United States. The par value of the stock of these roads is nearly $470,000,000, and the market value about $150,000,000.

In January, 1890, many of the leading railroad managers of the country, at a meeting in New York (now historical as the "Gentlemen's Meeting"), formally agreed to act harmoniously, and appointed Mr. Aldace F. Walker chairman of a committee to manage their operations. It is important to notice that this step in itself was a confession by many prominent railroad presidents that some central, controlling power is desirable. Mr. Walker is a lawyer of high standing, and has been a member of the "Interstate Com-

merce Commission." After a careful study of the problem, he proposes, and with great ability advocates, two remedies for the railroad difficulties. Please observe that these remedies are suggested by railroad interests only. So far as actual representation is concerned, the business public, who must employ railroads, had nothing to say in the formulation of these specifics for railroad diseases, and are to have no share in their administration. These remedies are: first, that the power to fix rates should be placed absolutely in the hands of a central agency, responsible directly to the presidents and directors of the various lines; second, that the maintenance of rates should be secured by placing all joint traffic under control of a central agency. It is important here to notice, as bearing on the feasibility of governmental control of the railroads, that Mr. Walker, himself the representative of the railroads in his official capacity, is confident he could easily arrange and superintend such a consolidation. Indeed, such an arrangement, in fact, exists between the railroads running from the Atlantic to Chicago and St. Louis, and also between the southwestern railroads, and is said to be entirely successful. This "entirely successful" is from the railroad point of view. What the business public might say as to its complete success is not reported.

The association formed at the January meeting above referred to proved short-lived. Conflicting interests and secret rate-cutting swept away all pretense of harmony, and new railroad wars, disastrous alike to the stockholders of the roads concerned and to the business community, broke out.

These, and the financial stringency in the fall of

1890, coöperated to depress railroad securities to an alarming extent. The total shrinkage was estimated at $300,000,000. With this great loss came extensive changes in ownership and control. As a consequence also came a new meeting in December, 1890, of prominent railroad managers, and a new and more elaborate scheme for combined and harmonious action was adopted. It is noteworthy that some of the ablest and shrewdest railroad managers in the West declined to enter into this association. President T. B. Blackstone, of the Chicago & Alton road, thought it would afford no surer basis for coöperation than the old agreement. Mr. A. B. Stickney, formerly president, now chairman of the board of directors of the Chicago & Great Western road, whose splendid achievements in the construction of that line are well known, coincided with this view, and considered the association a conspiracy of the strong lines against the weak ones.

But the ink was hardly dry on the new articles of association before trouble arose. The Union Pacific Railroad, under the control of the chief promoter of the new association, repudiated an agreement for crossing the bridge from Council Bluffs to Omaha, which agreement was claimed to be a valid and binding contract by the Rock Island and Milwaukee roads. The president of the latter, who was also president of the new association, said, "There is little use of traffic agreements if such a contract is not binding."

It thus appears, from the testimony of the railroad managers themselves, that consolidation is exceedingly desirable and in itself quite easy of attainment, and is

likely to be put into effect for the interest of the railroads themselves, if conflicting interests can be harmonized. But if consolidation of control, and especially of ownership, proceeds *far enough*, there will be no *conflicting* interests, and a few men of great ability and wealth, like the Goulds, Vanderbilts, Rockerfellers, Huntington, and Stanford, will control the great bulk of the railroads of the country. It was said to be the idea of Jay Gould that one company should control every road in the United States.

The progress of railway consolidation in the last twenty years has been astonishing, and during the last five years it has proceeded with redoubled rapidity. This movement is certain to advance with ever-increasing celerity until the entire railway system is consolidated into a few, not more than six or eight, immense corporations, or into a single company. This tendency to consolidation is not confined to this country, nor is it limited to railway corporations only. The tendency of the age in all enlightened countries is toward the building up of enormous business enterprises of all descriptions. Manufacturing plants are consolidated into trusts or combinations under one name and another. Establishments for the production of every class and description of goods are united in coöperative methods of various kinds, the purpose in all of them being to reduce expenses, to remove competition except under control of the association, and to maintain or enhance prices.

A list of the principal trusts of this character, numbering forty-three, was recently published in the *Rural New Yorker*, and is here reproduced:

Name of Trust.	Capitalization.	Water.
Standard Oil	$110,000,000	$45,000,000
Cotton-seed Oil	41,700,000	25,000,000
American Type Founders	9,000,000	3,000,000
Anthracite Coal	513,000,000	75,000,000
Ax	5,000,000	.....
Barbed Wire	12,000,000	4,500,000
Biscuit and Cracker	5,000,000	2,000,000
Brewers' (Chicago)	6,000,000	2,000,000
Bolt and Nut	5,000,000	2,000,000
Boot and Shoe	7,000,000	.....
Cartridge	3,000,000	.....
Condensed Milk	15,000,000	3,000,000
Casket	5,000,000	2,000,000
Celluloid	11,500,000	3,000,000
Cigarette	25,000,000	.....
Copper Ingot	20,000,000	.....
Cordage	15,000,000	5,000,000
Cotton Duck	10,000,000	2,000,000
Envelope	7,000,000	.....
Flint Glass	4,000,000	.....
Fork and Hoe	1,000,000	.....
Lead	90,000,000	60,000,000
Linseed Oil	18,000,000	12,000,000
Lithographic	11,500,000	.....
Locomotive	15,000,000	.....
Match	6,000,000	.....
Musical Instrument	5,000,000	.....
Oatmeal	3,500,000	.....
Rice	2,000,000	.....
Rubber	60,000,000	23,000,000
Safe	5,000,000	3,000,000
School-book	18,000,000	.....
Sewer-pipe	5,000,000	.....
Western Union Telegraph	85,000,000	50,000,000
Smelters	40,000,000	.....
Soda-water Machinery	9,000,000	.....
Spool, Bobbin, and Shuttle	7,000,000	.....
Starch	10,000,000	3,000,000
Steel	35,000,000	.....
Sugar	75,000,000	50,000,000
Trunk	2,500,000	.....
Wall-paper	20,000,000	6,000,000

This will illustrate at a glance the tremendous tendency of the age to the union of interests into immense

combinations in all the wide range of business effort. Here are trusts covering almost every article of common use, from petroleum and cotton-seed oil to wall-paper, including articles of food, such as oatmeal, rice, starch, and sugar, and articles of mere indulgence, like cigarettes, which trust is capitalized for $25,000,000. The heaviest of these combinations is the Anthracite Coal Association, which is capitalized for $513,000,000, $75,000,000 of this being watered stock. This is the largest amount of watered stock of any of the associations, but it is proportionately very small as compared with the Lead Trust, which is capitalized at $90,000,000, of which $60,000,000 is pure water. The Western Union Telegraph Company is capitalized at $85,000,000, which since the list was published has been increased to $100,000,000, of which more than $60,000,000 is water. The Sugar Trust, with an actual capital of $25,000,000, has issued $75,000,000 of stock, $50,000,000 of it being water.

The nominal capitalization of these forty-three trusts is over $1,350,000,000. The intention and purpose of such trusts, and their first effect when the union is complete, is to reduce expenses to a limited extent, and to prevent a reduction in price of the goods manufactured. The reduction in expenses is largely due to a reduction in the number of employees of one class and another, the wages or salaries paid to these being diverted to profits for the benefit of the stockholders instead of being paid out for the benefit of the community at large.

The second effect is to prevent a reduction in the price of the goods manufactured through competition under the ordinary laws of trade as they were under-

stood in former years. If improvements in the process of manufacture or reductions in the prices of raw materials occur, the increased profits thus made under the operations of such trusts are poured in a golden stream into the hands of the company, the consumers receiving no benefit from these improvements in manufacture. Under the old ideas of political economy it was held to be a settled maxim that the law of demand and supply would control prices and reduce them to the cost of production plus a fair compensation for the capital employed in the enterprise. But the oft-quoted axiom of George Stephenson, that "where combination is possible competition is impossible," is demonstrated to be much more nearly true, both in ordinary business affairs and in railroad combinations.

This tendency to centralization of business interests into great associations and corporations is just as powerful in England as in our own country. A recent English writer says:

"Gradually you find enterprises developing, organizations becoming more intricate and extensive, and the powers they acquire are found to be capable of seriously affecting the rights of individuals and the welfare of the public. Then government steps in and lays down laws for the regulation of such enterprise, prohibiting this, moderating that, stipulating the other thing, interfering and controlling everywhere. Larger interests, more elaborate organizations, a wider circle of shareholders, greater and greater public control, until we have here, amongst a hundred other gigantic concerns, a London & Northwestern Railway, with its 60,000 employees, its annual budget of £10,000,000 of money, and its funded debt of £100,000,000 — so

close an approximation to a thing of national creation and control that it might all be taken over to-morrow without necessarily involving the slightest practical change.

"This movement of late years has become almost appalling in its accelerating rapidity. Everywhere, and in every department of commercial and manufacturing activity, the tendency is to big businesses, to large operations, to the building up of great machines." *

The trusts referred to above show a nominal capitalization of $1,350,000,000, a sum one half larger than the national debt at the present time. But enormous as this sum is, it is a very modest amount indeed when compared with the nominal capital of the railroad lines represented in the famous meeting of railway presidents at the house of J. Pierpont Morgan, the great banker of New York, December 16, 1890. Twenty-nine men assembled in his parlors representing $3,000,000,000 invested in railroads, and the purpose of the meeting was to form an association by which this enormous capital could be controlled as a unit, and all competition and railroad wars be made to cease in the land. This was an effort to organize a combination or consolidation of tremendous magnitude and power. It would control, if united, a vast proportion of the business of the country. The report of the meeting states that it took only a few hours for these twenty-nine men to form a coalition which had in its power the business interests of all the Western States. Besides, as the plan adopted was stated to be the same as agreed upon between the Vanderbilt and Pennsyl-

* "The Social Horizon," p. 2.

vania lines, the proposed association covered all the Northern States except New England, as well as the Western States. It is true this attempted combination fell to pieces, as all others have, on account of the conflicting interests of private capital invested in these roads. But the almost incalculable power over business interests such a combination would be able to wield gives a hint of what may be expected when consolidation under private ownership is carried to its full extent. Every mercantile or manufacturing enterprise, large or small, in all this vast and busy area of our country, would be absolutely at the mercy of this prodigious monopoly, without the power of adequate redress for any wrongs which might be inflicted upon it, should it venture to resist any requirements, however unreasonable, which such a combination might make.

The power of enormous private fortunes in producing consolidations of monumental magnitude is shown in the development of the so-called Vanderbilt railroad properties within forty years. Beginning with a comparatively small line built up from eleven still smaller ones, constituting the New York Central line from Albany to Buffalo, the elder Vanderbilt quickly absorbed the Hudson River road and the Harlem road, and this policy of consolidation by absorption has been steadily followed by his family since his death. The Vanderbilt interests now control three of the principal lines to Chicago and also the Northwestern road to St. Paul and Omaha. The entire number of miles owned, wholly or in part, and controlled by the Vanderbilt family amounts to 15,000 miles. The Gould family own and control a prodigious mileage of roads, largely in the southwest. Mr. Huntington and Senator Stanford

control the Pacific Coast lines mainly. As is stated elsewhere, Mr. Huntington has expressed himself several times in favor of consolidation, as did Jay Gould also during his lifetime.

If, besides these immense consolidations of the Vanderbilt lines and those in the west and southwest, we reflect that the Pennsylvania line controls 8000 miles, a vast system in itself, and recall also that only recently a large part of the southeastern lines were combined into the Richmond Terminal, while the Central Southern roads were united in a close traffic association, we shall see that for many years a very large proportion of all the railways of the United States have been substantially consolidated into a few monstrous organizations. Very recently still further consolidations have taken place. The New Jersey Central, the Lehigh Valley, and the Reading roads have combined, and still more recently this combination has been further extended by the absorption of the great Boston & Maine system of New England, and the adroit capture of the Connecticut River road.

Until recently New England has been comparatively free from these enormous railroad combinations, but within a few years the same tendency has manifested itself in this section of our country, and under the lead of the New York, New Haven & Hartford road, "*The* Consolidated Road," as it is called, and the Boston & Maine road, a large part of the railway mileage of all New England has come under the control of these two great systems.

Events in connection with the Reading Combine have moved so rapidly that almost while these words have been written the Reading road has broken down

and passed into the hands of receivers. It is freely predicted that the effect of this will be to put substantially all the railroads of New England, except possibly the Vermont Central lines, under the control of these two great corporations.

In whatever direction we look in any section of our vast republic, we find prodigious combinations of railway capital actually perfected, or progressing rapidly toward complete absorption of all smaller lines. This tendency to consolidation is irresistible. The economic advantages are so great, the temptations to vast profits are so incalculable, and the allurements to ambitious and able men afforded by the control of these mighty social machines are so enticing, that the movement must go forward. As has been said by a leading authority on these subjects: "The impulse to such great economies as can be secured by combination is so strong as to be irresistible. It is one of those forces which overwhelm the man who puts himself against them, though they may be guided and directed. . . . The first conclusion to be borne in mind in a discussion of remedies is, that the tendency of railways toward monopoly is in the long run irresistible."*

This movement for consolidation is absolutely certain to continue, and ultimately to reduce the number of independent lines to a very few. It is almost impossible, as has been said, to make any division of the territory of the United States among these roads as they at present exist. One of two things must occur. Either furious railroad wars will be waged between these immense combinations until, worn out, the weaker lines shall be absorbed by the stronger ones,

* Prof. R. T. Ely in *Harper's Magazine* for September, 1886.

and so peace be made by virtue of conquest; or, mutually wearied of their titanic strife, peace shall be brought about by further consolidation, the ultimate result being that one vast aggregation of companies will control all the railroads of the United States, or some strong traffic association will rule them all with a rod of iron, and the business interests of the country with them.

The American people must within a limited period of time face one of two alternatives. Either they must permit consolidations to go on under private ownership until one scepter rules the whole railway interests of the country, or under some plan the railroads are brought under one ownership and control, which control at least, if not ownership, can only be that of the whole people, if the commercial liberty and the principles of political liberty of the whole people are to be preserved.

The tendency of thought in this country, aided very much by that part of the press controlled by railroad influences and power, has been to avoid meeting this issue and put off the day of settlement of this question. But it cannot be much longer deferred, unless the American people deliberately prefer the possibility of economic and political slavery to the railroad power to a manly and courageous grapple with this great problem.

CHAPTER V.

THEORY AND PRACTICE OF RATE-MAKING.

Theories of Rates.—Cost of Service.—Small Return on Capital in Railroading.—The Dividend Factor.—Watered Stock.—Ethical Basis for Higher Rates on more Valuable Goods.—Charging "What the Traffic will bear."—True Theory of Rates.

A JUST and very serious accusation against the present railway system is that rates are always arbitrary; sometimes too high and sometimes too low; always changeable and uncertain. Great efforts are constantly made through combinations of various kinds, such as agreements for joint rates, divisions of traffic (pooling, before this was made illegal), traffic associations and others, to preserve a stable and uniform basis, but they are hardly formed before they are broken and new fluctuations occur. The words of Chairman Stickney on this point are noteworthy. He said, when discussing a recently formed traffic association: "What is needed is a radical change in the practice of making rates. Rates are now made in an arbitrary manner and without regard to mathematical principles. No calculations are made on the cost of transportation or what profit the roads will derive from the rates. The rate-makers simply jot down a lot of figures haphazard and take it for granted that on the whole they will come out ahead. This practice of

rate-making must be stopped, and rates be based on scientific and mathematical principles before the condition of the railroads can be improved. If the railroads cannot do this, the *government* ought to do it for them."

This emphatic statement from one of the ablest railroad managers in the United States is most striking and significant. No stronger argument for governmental control on this point could be made.

The question of a correct and satisfactory theory of rates has received a large amount of discussion. By some writers it has been claimed that rates should be based entirely upon cost of service, including in this expression a fair return for the capital invested. By others it has been held that cost of service is not a correct basis upon which rates should be formulated. In defense of this theory it is argued, that many articles of great bulk and low price must be moved at a less rate than the cost of service for their transportation. Railroad operations are alleged to be different from other kinds of business, because the expenditure for road-bed and other fixed capital is very large in proportion to the capital employed strictly in performing the service of transportation. In railroad operations the idle wheel is the losing factor and the moving wheel is the productive factor. If, therefore, any given articles can be transported for a greater compensation than the mere cost of train service, it is claimed they should be moved both for the benefit of the railroad and for the community in which the articles are produced, even though the compensation received is less than the total cost of service. There is great force in this argument, although it does not fully sustain the

conclusions deduced from it. An acute and valuable discrimination has been made by several writers on railway subjects, notably by Professor Seligman.*

These writers lay down the principle that the true theory of railway rates is not based upon actual cost of service, but upon "value of service."

Although this is but a return to some of the ideas expressed in the earlier discussions on railway rates, it is a most useful and suggestive principle when rightly understood. In a valuable article by Prof. F. W. Taussig of Harvard University, entitled "A Contribution to the Theory of Railway Rates," published in the *Quarterly Journal of Economics* for July, 1891, that author says: "So far as the phrase is a convenient mode of stating to the general public the consequences which flow from the element of joint cost in railway services, and of calling attention to the inevitable effects of demand on rates, it may be useful. But surely it gives no real help toward solving the difficulties of the problem. It cannot mean that rates are based on the value in use, or the intrinsic utility of that service. On that ground, grain and coal presumably would be charged higher rates than silks and spices. If it means that rates depend on the value of service in the sense of its value in exchange, we are confronted with the obvious difficulty that the rates *are* the value in exchange of the service. The explanation then says simply that charges are determined by what is charged, which does not advance matters." But with great deference to the views of this distinguished economist, it must be questioned whether this is the correct view of this principle. As he states, the principle

* See *Political Science Quarterly*, vol. ii., p. 330.

certainly does not mean that the "value of service" depends upon the utility to the public of the articles transported. But, correctly understood, it means the advantage to the public of having necessary articles of comparatively low value carried at as low a rate as possible. And as the service is a public service, the lower the expense of carriage the greater the value of the service. From this point of view it will be seen that railway rates should be in theory, as they are in fact, in inverse ratio to the utility to the community of the articles transported, and that the principle of "value of service" relates both to the producer of the article at one end of the line and the consumer at the other end. It is a benefit to a miner whose mine produces low-grade ore which can be made of use only after transportation for a long distance, and to the farmer on the plains of Nebraska or Kansas, whose chief product is wheat or corn, which must seek a market many hundreds of miles away.

Reference has been made above to the peculiar character of railroad operations. The business of railroading differs materially from other industries, such as manufacturing, merchandising, banking, and other ordinary classes of business, in respect to the proportion of income which must be paid out for return on capital invested, in the double form of fixed charges and dividends when the latter are paid. Indeed, it differs very widely from many of these avocations in the small ratio which the total output of the railway system bears to the amount of capital employed. The gross earnings of the railway system of the United States for the year ending June 30, 1890, as has been already stated, were about $1,100,000,000, while the

total capital, including stock and bonds, was about $10,000,000,000, the gross return therefore being eleven per cent. But the total product of a manufacturing plant will often be many times its entire capital. At first sight this would seem to indicate that capital invested in railroads is at a disadvantage as compared with that engaged in manufacturing. The total disbursements for compensation to capital employed in railways is usually about thirty per cent. of the gross income; while in other industries in which only the ordinary rate of profit is obtainable, payments for capital account rarely exceed ten per cent. and often fall below that rate. But on careful examination this apparent disadvantage of railway capital will be seen to be only apparent.

The reasons for the greater ratio of return to capital in railway business are principally two:

First, that the original expenditure for the road and for station and terminal facilities, that is, the fixed capital, is great in proportion to the rolling stock. Second, the work done is in the nature of an aggregate of services performed, and does not consist in the production of new articles from some other thing which must be purchased.

There is therefore in the business of railroading no expenditure for raw material, which constitutes so large an item in manufacturing, and no outlay for stock, as in trade. The principal disbursements of a railroad can be divided into two classes:

First, those for return on capital employed in the construction of the road, the stations, and the termini, including interest on bonds and dividends on stock.

Second, those for operating expenses, in which should be included return on capital invested in rolling stock, and interest on car-trust certificates or other forms of indebtedness for equipment. It will be seen that the income to meet disbursements for fixed charges and dividends is of the nature of tolls for the use of the road; while the balance of the income is in the nature of compensation for services performed for which *quantum meruit* may be demanded.

In many of the discussions on the subject of rates it is asserted that the element of return upon the capital invested in railroads has no influence in determining rates. This principle as sometimes stated certainly cannot be correct. In the article of Professor Taussig referred to above, after conceding that so long as railroads are built by private capital they must in the long run receive at least a moderate return on the capital invested or the capital will seek other forms of investment, he says: "But this, the largest item in the railway's outgo, has no influence on railroad rates; so much is admitted by all careful writers and by all railway managers. Looking at the general range of rates as they develop in the long run, we cannot conclude, therefore, that return to capital may be dropped from the list of factors determining them. But looking at any particular rate, at the charge on this or that item of traffic, we can reach the conclusion unreservedly; and this is the sense, to my mind, in which it is true and important that return to capital is not a factor in determining rates." I must respectfully dissent from so broad a statement as this. Carefully analyzed it leads to rather puzzling results. The statement is that as to any particular item of charges the capital invested

in railways has absolutely no influence, and that this conclusion can be arrived at unreservedly. But the amount paid out by the railroads of the United States for the year ending June 30, 1890, as return on capital invested, including dividends on common and preferred stock and interest on funded debt, was in round numbers $316,000,000. Subjected to mathematical analysis, the statement that the capital invested has absolutely no influence in fixing rates leads to the following puzzling conclusion:

Let x equal the charge for any item of freight or passenger transportation, and let y equal the fractional portion of this charge which belongs to return on capital invested. Then, under the principle stated, if return on the capital invested has absolutely no influence in fixing rates in any given case, we have the following statement:

$$x \times y \times 1 = 0.$$

If this be true for one case, it must be true for one hundred or one thousand charges. Therefore,

$$x \times y \times 1 \times 1000 = 0.$$

Let us now assume that the entire number of separate items of transportation on all railroads of the United States during the year 1890 was 1,000,000,000. These were not charged for by wholesale or in bulk, but each item had its distinct and individual rate, and out of this 1,000,000,000 of distinct charges was derived the vast sum paid over for fixed charges and dividends. If the principle above stated is correct, we have this remarkable result.

Although, as shown above,

$$x \times y \times 1 \times 1000 = 0,$$

yet

$$x \times y \times 1 \times 1{,}000{,}000{,}000 = \$316{,}000{,}000,$$

the amount of interest and dividends paid on all the railroads of the United States for 1890. In other words, combining the last two formulæ, we have:

$$(x \times y \times 1 \times 1000 = 0) \times 1{,}000{,}000{,}000 = \$316{,}000{,}000.$$

There certainly must be some fallacy in a principle which develops such remarkable mathematical conclusions as the above. It is not supposed that any rate-maker knows just what proportion of the charge on any one item belongs to return on capital, any more than he knows what proportion belongs to the salary of the superintendent. But it is an error to suppose that it is not present in his mind as a matter of very serious consideration. Nor does the fact that on some articles the rate does not include any considerable proportion for return on capital prove that this is true of all charges. To argue that because the dividend factor is not known for each charge and is not present in some charges, therefore it is unknown and absent from all charges, is defective logic.

In fact, as the gross earnings of the railroads for the year ending June 30, 1890, were in round numbers $1,100,000,000, while the disbursements on capital account were $316,000,000, it will be seen that the dividend factor is on the average about thirty per cent. of every charge.

It is not surprising that railway managers should favor the idea that the dividend factor has no influence in fixing rates. As a rule managers of railroads have not been desirous of having too much light thrown on the system upon which their charges were based. Indeed, Chairman Stickney states that rates are made without system. He says: "The rate-makers simply jot down a lot of figures haphazard and take it for granted that on the whole they will come out ahead." But it is surprising to find many writers, usually careful in such matters, falling into this error. The matter is of a good deal of importance, because, using this erroneous assumption as a basis, railroad advocates argue that the amount of capitalization of a railroad makes no difference; that whether the stock of the road is half water or all water, and is large or small, has no influence upon the rates charged. Proceeding upon the erroneous assumption referred to, they are correct in their conclusions. But the statistics of the Interstate Commerce Commission abundantly refute any such proposition. Besides, if this were true, a road which had no funded debt and no watered stock could and would make rates so low as to have a monopoly of the business within its field of operations and yet earn an enormous profit on its capital. On the other hand, however great the funded debt upon any railroad line, rates are made high enough to pay these charges, and the effort is made to pay some dividend upon the stock. Moreover, if the dividend factor did not enter into the rates, as the business of any railroad increased the rates would diminish instead of being applied in form of large dividends upon stock. If any road is limited by its charter to a certain percentage of dividend on

its original stock, as is the case with many roads in the country, when the business increased so as to pay this dividend the rates would be reduced were it not for the dividend factor. But these roads in every instance known to the writer have evaded the provisions of their charters, and by stock-watering in one form or another have managed to absorb the increased profit due to enlarged business, thus making the dividend factor two or three times larger than the original limitation in the charters. This of itself is a conclusive demonstration of the correctness of the position here taken.

Mr. Cook has clearly and ably stated this most serious objection to watered stock. He says: "The people have given to these corporations valuable franchises; have permitted them to take land arbitrarily upon payment therefor; have empowered them to collect tolls; have limited the liability of the stockholders; and have excluded all outside parties from placing cars on the tracks of a railroad, although those tracks are public highways. In exchange for all this, the people have a right to expect that the charges for service shall be reasonable and low; that such charges shall not be such as to pay extravagant profits on the actual cost of the property; and that when, by increase of population, the profits become great, then the rates shall be reduced. All this is what the people have a right to demand, and yet all this is what the corporations prevent from taking place by issuing watered stock and bonds.

"This is the greatest of all objections to watered stock and bonds. They are issued to represent the future increase in the earning power of a public franchise." *

* Wm. W. Cook, "The Corporation Problem," p. 29.

The truth is that return on capital invested, or what I have called the dividend factor, is a most serious and important factor in determining rates. But it is the most elastic factor. If a road is to be operated at all, certain expenses must be paid, such as salaries for the officers, wages for the employees, coal for fuel, together with ordinary repairs to the road. These disbursements must necessarily be taken from the gross earnings. But dividends are not imperative. The train men must be paid, but the bondholders and stockholders can be put off. Hence it will often be wise to make a rate on certain articles which will pay only the mere expense of the train and terminal service, leaving out the dividend factor entirely in the case of these articles. But railroading as at present organized is not carried on for charitable purposes, and if the dividend factor is eliminated in the case of certain articles, it is only with the hope and expectation that it will appear in other rates and be large enough to atone for its omission in the former cases. In many rate discussions it has evidently been assumed that theoretically the same charge should be made for hauling a car-load of coal as for a car-load of silk or tea of the same weight. Apparently it has seemed to these writers that the weight of the article transported is the only thing to be considered. But practically the railroads have always charged a much higher rate for transporting the more valuable articles of merchandise, and much difficulty has been experienced by some writers in showing a basis of right and justice for such increased charges. Such charges have been found by experience to be necessary to keep up the income of the railroad to any fair amount. The smaller charge

for transportation of a cheap article and a larger charge for transporting more valuable articles of no greater weight is similar to the taxation of land or other property of low value in proportion to its value, while other land or property no greater in area or bulk, but more valuable, is taxed more heavily. The rate of taxation is the same but the amount of taxation is much greater. The taxes on a farm of one hundred and sixty acres may be $100 per year; but the tax on a city lot covering perhaps not more than a quarter or a half acre may be ten times as much. In this, as in many other respects, there is a close analogy between taxation and the true basis for railway rates, showing that railway rates are, as we have argued through all this discussion, simply a form of taxation; and if a form of taxation, then the government in some method or other should control and regulate it. But difficulty has been experienced by some writers on political economy in explaining why a poor man should be taxed a small amount and a rich man a greater amount, or why a poor piece of property should be taxed less than a more valuable piece. Some of these writers say that it is no reason based upon right to say that the richer man or the more valuable property should pay a higher tax because of ability to do so. This, say they, is an argument of capacity and not of ethics. Let us look more closely into the matter and see whether this assumption is correct. It will be conceded that if all citizens were upon an equality, and government is to be maintained at all, all citizens should contribute an equal share toward its maintenance. But men are not upon an equality. So, too, if all properties were equal in value, all should contribute the same amount

toward governmental support. But men differ in wealth as properties differ in value. Now all wealth or value represents accumulations of labor—the surplus which in the course of generations has been accumulated by the diversified labor of multitudes of men. Therefore, when we speak of any sum of money, we may consider it as representing or embodying the number of men who, working for a given time, at customary wages, would earn the given sum. If, therefore, $1 be assumed as the equivalent of the work of one man for a day, less the amount necessary for the support of the worker, then the expression $100 summons before us one hundred men with brawny arms, ready for our service for one day. As representing $1,000,000, a mighty army springing from the soil, like the offspring of the dragon's teeth in the old fable, stands ready to do our bidding.

When a tax is levied on any property a small fraction of that property is appropriated for the use of the state. As therefore it would be unreasonable to ask as much assistance from one thousand men as from one million men, so it is unjust that the same tax should be levied on property worth $1000 as on that worth ten or a hundred times as much. The services performed by a railroad are services performed for one portion of the public called producers and another portion of the public called consumers. It is for the benefit of the public, therefore, that railroad rates should be as low as possible, and bear equitably upon all interests in proportion to their capacity to bear them. If, now, a car-load of coal weighs twenty tons and is worth say $100, it would not be just that it should pay the same as a car-load of silk or tea weighing precisely

the same, but worth perhaps two hundred times as much. It is easy to say a thing is just or right, or the contrary, but it is not so easy always to give the reason why it is so. But in the light of the foregoing discussion it is easy in this case to give the reason. The justice of the larger charge on the costlier articles does not depend upon their greater utility to the community. As a matter of fact a single car-load of coal is of more real necessity and utility to the community than a dozen car-loads of silk. But in economic theory the question of actual usefulness is not considered. Each article is considered to be worth to the community what it will bring in the open market. As it is right that each living citizen should contribute his fair share toward maintaining the state, so it is right that these ghostly citizens whom I have imagined standing behind each dollar of accumulated wealth should pay their fair share. The obligation for contribution in each case rests upon justice and fair dealing between man and man.

In assuming that a ghostly citizen is behind each dollar of wealth, it must be borne in mind that a living citizen performs a constant series of days' work for many years. If the dollar is expended, its work is done and cannot be repeated. Hence it would be erroneous to assume that the basis for that part of the rates increases exactly with the value of the goods. The real contribution which any form of wealth should make for purpose of taxation, either for general purposes of the government or for railway transportation, is more properly determined by the income which at the usual rate of interest would be produced from the given sum of money or value of any kind. In fixing a schedule of

rates, therefore, a certain rate per ton per mile should be determined which would represent as nearly as possible the absolute cost of transporting that weight of articles of any kind, dear or cheap, the given distance. To this should be added a reasonable amount for terminal charges. Mr. A. B. Stickney, in his able discussion of this subject in "The Railway Problem," has estimated these charges at $1.20 per car for the two terminals, which any article transported must reach. To this should be added a fractional rate based upon the value of the goods as indicated above. This rate should be fixed and uniform for all persons and upon all kinds of goods of the same value and character. For freight of large bulk, relative to its weight and value or of a perishable nature, an additional charge must be made as a compensation for the increased car-room and labor necessary for their transportation. The basis upon which a larger charge can be rightly made upon more valuable goods does not depend upon the ability of the purchasers to pay an increased amount. In a very able and suggestive discussion on railway rates, Prof. G. Cohn seems to imply that this is the real basis for higher rates on more valuable goods. As a result he is unable to apply the principle to freight charges, because, as he well suggests, cheaper goods, such as coal and low-grade ores, may be used by the rich. It is also true that expensive articles are often purchased by poor people or those really unable to pay for such articles. The value of all goods as expressed by the price willingly given for them in open market is the basis upon which railway rates as well as taxation should be computed. This is not at all, as I have remarked before, the real utility of

these articles to the public. Indeed, it is generally true that the utility of articles to the public is in inverse ratio to their price. The most essential things for the welfare of any community in a material sense are food, fuel, and clothing sufficient to protect from the weather. But these articles are all, always and universally, of low price. And the lower the price the greater the general utility to the public. The great difficulty which has been expressed by many writers on this subject in fixing the ethical basis upon which lower rates for essential articles, and higher rates for more valuable articles of no greater weight, can be defended, arises from the theory or assumption that railways are operated or should be operated as business enterprises carried on for the sake of profit. If this idea is entirely done away with, as it should be, and railways are looked upon as public highways operated for the public good, the greatest difficulties in respect to rates, both as to their ethical basis and their practical determination, will be removed. In the present industrial condition of the country, with manufacturing enterprises largely in the Eastern and Middle States, and the South and West mainly devoted to agriculture and mining, it is clearly for the good of the nation as a whole that the low-grade ores of Colorado, or the low-priced corn of Kansas and Nebraska, should be transported to the eastern market, or the eastern seaports, at the lowest possible cost. It is also for the benefit of all that the anthracite coal of Pennsylvania should be carried to New York or New England, or the manufactured goods of New England and New York should be taken to their Western or Southern markets as cheaply as possible. It would be very difficult to establish an

ethical basis under which it would be right to claim that a private citizen doing business simply for the sake of the profit the business would afford could be required to perform any service for less than its entire cost with a reasonable profit added. If, therefore, railways are simply private corporations for pecuniary profit, the same principle applies, and no moral basis can be found upon which they should be required to transport any articles at less than full cost with as much profit as they can get in addition. The attempt which has been made in the past to treat railways as if they were corporations for pecuniary profit, with some public duties attached which are quite indefinite and undefined, or as quasi-public corporations, has led to inexplicable confusion both in business operations as in fixing rates, and in legal decisions and conclusions. When railroads are once put upon the basis purely and simply of public highways, the vast bulk of these complexities will vanish away like the shades of the night at the dawning of the sun, and a generation hence people will wonder why such confusion was ever permitted or possible.

Much complaint has been made by many writers on railway questions, especially by some prominent railway officials (notably A. B. Ashley, president of the Wabash Railway, and T. B. Blackstone, president of the Chicago & Alton Railway), because of excessive competition, which they allege is due to the indiscriminate granting of franchises for railroads, without a careful examination to ascertain whether the new railroad was needed or would be profitable, or would draw away business from established roads, thus taking away profit from these enterprises. But if railroads are purely private busi-

ness enterprises carried on for the money that can be made from them, then any citizen or combination of citizens has an absolute right to a franchise for a railroad, and an absolute right to build such a railroad, whether it parallels any other road or takes away the profit of an older road or not. The right is just as complete and perfect as it is for any citizen to parallel or duplicate any factory or store, or open any new mine, or build a new ship to compete for the commerce of the world. Yet these same writers, many of them, insist that their railroads are private enterprises carried on for the money that is in them, coupled, it is true, with some indefinite public duties, which, however, do not interfere, or should not, with their making all the money they can without competition. Hardly any position could be more inconsistent or lead to more confusing results, either ethically or economically, than such a position as this.

One of the principles upon which rates have been based is that of "charging what the traffic will bear." As a practical expression for the fact that if too high rates are charged for certain classes of goods of great bulk and low price they will not be offered for transportation, while goods of higher value relative to their bulk will be offered at a much higher rate per hundredweight, this is a convenient phrase. And if understood in the sense which has been above referred to, it expresses also a scientific principle. For many classes of goods, to secure their transportation at all, a rate must be made which will but little more than pay for the immediate cost of hauling these goods, without regard to terminal charges or surplus for dividend or interest. This can be fully defended only on the basis of the ser-

vice to the public in the transportation of such articles. If a railroad is purely a private corporation for pecuniary profit, it cannot, on any ground of right, be required to transport such goods. And the theory that it is profitable to transport such goods, while they pay nothing but the cost of train service, is largely fallacious. As a matter of fact, accurate analyses of expenses and returns for these classes of goods will in the great majority of cases show considerable profit.

If the principle of charging what the traffic will bear is used only to encourage traffic not otherwise attainable, it is a wise and useful principle. But there is quite another side to it. It often means and just as truly applies to an extortionate demand which takes all the profits for the railroad and leaves little or nothing for the shipper. The principle of taking all that can be gotten without suppressing shipments seems beneficent when it means to take only so small an amount that the traffic will be encouraged. But its meaning also covers the reverse, and this is too often the practice hidden under this euphonious phrase. When used to mean, as it often is, that the rate shall be just as large as can possibly be extorted from the shipper, without regard to fairness or justice of the rate, it is a weapon of oppression, and an angel of darkness disguised as an angel of light. Where a shipper is so unfortunate as to be without opportunities for competition in railway rates, being near only one line, he is at the mercy of the railroad, and the principle of charging what the traffic will bear does not seem so beneficent to him.

The action of a recent convention of railroad presidents in entering into a compact not to reduce passenger rates to and from the Columbian Exposition at

Chicago in 1893 is a suggestive commentary upon present ideas of railroad duties to the public. These officials were urged not to form such a compact, but to reduce fares, either by excursion rates at specified times or by round trip rates at a considerable reduction from regular fares. The reply made by them indicates how entirely the idea that railroads are the servants of the people performing governmental functions was out of their thoughts. They said in substance: "The hotel men of Chicago and the keepers of boarding-houses and restaurants do not expect to charge half fares or reduce their rate of charges. At the time of the fair the merchants of Chicago do not expect to sell goods at a less price, nor do other business men plan to make reductions. Why, then, should the railroad be expected to do so?" This reply indicates a false and pernicious view of the relation of railroads to the public. First, it assumes that they are just like other private business interests, carried on solely for the profits of the business, without limitations or duties arising from the peculiar powers given to railroads. Every railroad is to a certain extent a monopoly, and if the views expressed in writing by some of these very officials who entered into this compact were carried out, the railroads would be a greater monopoly than they are now.

Railroads exercise the right of eminent domain, an attribute of sovereignty not conferred upon any private business enterprise; as has been said often heretofore, great donations have been made them by the public, and all these powers and privileges constitute them trustees for the public for the proper performances of the duty they are set to do, namely, transportation for the public. There is no monopoly in the business of sell-

ing merchandise or keeping a hotel or restaurant. The hotel-keeper cannot compel persons needing accommodations to come to his house or do without food and shelter; but the railroads can and do compel entire communities, and large portions of great States, to accept their terms of transportation or be practically ruined. Every great power of this kind is coupled with a trust or duty commensurate with the power. There is a fundamental maxim of the law which is as applicable to this relation of the railroads to the public as it is to a thousand other relations between man and man.

"*Sic utere tuum ut alienum non lædas*"—"So use your own as not to injure the property or rights of another," is a maxim applying to railroads with peculiar force, and fully carried out would do away with many of the evils of railroad management concerning which just complaint is made.

A second error in this reply arises from the fact that the cost of carrying a greatly increased number of passengers does not increase correspondingly with the increase in number. Of course in all lines of business well managed it is cheaper to carry on business by wholesale instead of by retail, but it is peculiarly so in the case of railroads. The difference in cost between running a train of six cars or one of nine cars is but little, and the difference in cost between running a car full or one third full is hardly perceptible. The truth is that this compact of the railway presidents seems to have been made in utter disregard of their true relations to the public and the duties they owe to the people, who have conferred special powers and privileges upon them.

It is simply one more indication of the mercantile spirit, or the desire to carry on the business for all the profit possible, which would be greatly increased and strengthened if consolidation under private ownership should proceed far enough to substantially eliminate competition.

CHAPTER VI.

THE EVILS AND INJUSTICE OF DISCRIMINATIONS.

Discriminations.—Freight Classification.—Long and Short Haul.—E. P. Alexander's Defense of the Long-Haul Principle.—Increase of "Net Earnings" only Justification.—Inimical to Interests of the Public.—Spokane Case.—Georgia Cases.—Interstate Commission justifies this Discrimination to meet Water Competition.—Great Evil and Injustice of this Class of Discriminations.—Levies Tribute on Inland Territory to support Low Rates at Competitive Points.—Economic Error of Competition by Rail with Carriage by Water.—Discrimination to Individuals condemned by all Writers on Railway Subjects.—Same Principle as Discrimination to Places, only on Smaller Scale.

A GREAT evil, perhaps the greatest evil under the present system, is *discrimination* in favor of one individual or community against another. The injustice and wrong of the practice have been intolerable. Favored communities and individuals have been built up and enriched and others have been ruined by this injustice. Professor Hadley, in his able work on "Railroad Transportation," says discriminations are "the most indefensible part of the whole system of railroad management. It is characteristic that Bismarck, who always chooses his fighting ground with skill, made this a main base of operations in his contest against private railroad policy in Prussia.

"When the system of granting special rates becomes deeply rooted, a great many are given without any

principle at all, through the caprice or favoritism of the railroad companies and their agents. The revelations made before the Hepburn committee as to the practice of railroads in the matter of secret rates were simply appalling. The fact that railroads had responsibilities to the public seemed to be completely lost sight of. There was in many instances scarcely a pretense of regular charges. It was estimated that fifty per cent. of the New York Central railroad business was done at special rates." *

These statements from Professor Hadley are of great weight, because his work throughout is an argument against state ownership of railways, although both in this book and in an article in the *Atlantic Monthly* for March, 1891, he shows the evils of the present corporate management, and the necessity of some control for the protection of legitimate investors in railroad securities, as well as for the safety of the public.

The evils of discrimination had become so unbearable that the whole country was aroused, and Congress, after a long investigation, passed "An Act to Regulate Commerce," which became fully effective April 5, 1887, and is commonly called the "Interstate Commerce Law."

Mr. Aldace F. Walker, in a vigorous article published in the *Railway Review* for January 4, 1890, says: "The introduction of the bill was preceded by a long investigation, which resulted in the formulation of an able report, embracing a concise statement of 'the causes of complaint against the railroad system.' The points covered by this indictment were eighteen in number, and there is scarcely one of them which is

* "Railroad Transportation," p. 120, and note.

not comprehended within the significant word 'discrimination.'" One of the chief purposes of Congress in enacting this law was to correct this abuse and evil, but on account of the number and power of conflicting interests the object is only partially attained. These conflicting interests are all due to private ownership in different and antagonistic, if not hostile, corporations, each striving to gain some advantage over the other in the amount of business done or in public estimation and patronage.

Discriminations are principally of three kinds: first, discrimination between commodities, leading to freight classifications; second, discrimination between places, developing the "long and short haul" problem, in respect to which very serious differences of opinion exist; third, discrimination between individuals.

The first class of discriminations has gradually grown up from the practical experience of railroad men. In the earlier years of railroading comparatively little was known of the principles upon which are based classifications of freight and the practice of charging varying rates for the same weight of goods for equal distance, according to the character and value of the articles transported. But it soon became evident that heavy and bulky but cheap articles like coal, building-stone, hay, wood, cheap ores, and other things of similar character, must be carried at a low rate, or they could not be transported at all. The rates, therefore, must be made very low on all goods transported, or higher rates must be charged on some of the goods to make up for the low rates on the cheaper and bulkier articles. If all rates were reduced to the standard of the cheaper goods, the road could not be maintained. To

meet this exigency the second alternative was adopted, namely, to charge higher rates on the more costly commodities. In this way has gradually grown up the universal practice of freight classification. These classifications vary somewhat in different localities and on different roads, and some injustice and damage are occasioned thereby. But the principles on which they are based are everywhere the same, viz., that the cheaper and heavier articles shall be transported at as low a rate as possible, and the more expensive goods shall pay a higher rate. This principle is commonly called "charging what the traffic will bear," and so long as railroad rates are made in accordance with the right reason and the beneficent phase of this principle, this class of discriminations is alike for the public good and the benefit of the roads. But as suggested in the preceding chapter, this principle is sometimes interpreted to mean "charge *all* the traffic will bear" without regard to the rights of the shipper or the fairness of the rate. One or two actual cases will illustrate this evil side of the principle. A farmer living near Sacramento having a considerable crop desired transportation to San Francisco, where the market was favorable. He applied to the local freight agent for a rate. The agent wired the superintendent for instructions. The latter promptly replied, "Find the cost of production and the price in San Francisco and charge him the difference as the rate." In vain the shipper protested that such a rate would leave him no profit. The rate was made on the principle of charging what the traffic would bear, and he had no redress. A friend of the writer, a chemist and assayist of high repute in Utah, furnishes an illustration in his own

experience in connection with a mine in which he was interested. He writes: "I wanted to get a rate on sulphur to Salt Lake City, and to San Francisco also. The railroad charged the same rate from Humboldt as from San Francisco to Salt Lake City, and nearly the same rate from Humboldt to San Francisco as from Salt Lake City to San Francisco. I got them to come down a little, but nothing like a fair proportion. Until the passage of the Interstate Commerce Law the Central Pacific Railroad always charged the regular through rate to San Francisco, and the full local return rate to the point of destination for all shipments to points in Nevada, while they hauled the goods from the east to the point of delivery only. It is still the custom of the railroads to charge freight on ores according to grade in silver. In adjusting the rates on all products they figure on the cost of production, and charge just as much as the commodity will stand. The local rates in the west are robbery as a rule now. The through rates are better, but only on account of competition. For example, the second-class rate, limited, to Seattle over the Union Pacific is $27 from Omaha, while the same rate from here is about $23, and we are half-way. The same is true between here and Denver."

The second class of discriminations is that between places. In some instances, happily comparatively rare, this is due to personal motives and influences, as where much lower rates and better accommodations are given to one place than are afforded to another equally entitled to them. In the more favored town a director or prominent officer of the road is pecuniarily interested, and hence the superior advantages

accorded to that place. In the newer section of the country, when a new railroad line is projected usually a Town Lot and Land Company is organized, in which often prominent officials of the railroad are interested, and their knowledge of the proposed location of the road is utilized in purchasing tracts of land at nominal values for town sites, to be sold after the town is located at an enormous advance. Frequently the line of the road is swerved from the best route to some inferior location to advance these private schemes. Sometimes the entire road becomes a land-grabbing scheme with a town-lot speculation attachment. The western half of one of the principal roads in Iowa was built mainly on this plan. Its natural route was along one of the old stage roads running through the county seats of the counties through which it must pass. About these towns was a well-settled country, with rich farms well improved for that early day. The towns were moderate in size, but had been established as trading points for many years, and stores, schools, and churches had grown up.

But there was a belt of government land lying between the two belts of settlement about the respective county seats, which the road coveted, and if the line passed through the old towns there would be little chance for the speculative directors to profit by laying out town sites. So the road was laid out and built through the unsettled lands, avoiding every old town on its route. New towns were laid out to suit the views of the Land Company, and the line of the road was curved about according as the ten- or twenty-mile limit of the grant would produce more or less land. As a result, the old settlers who had borne the brunt

of peril and hardship in opening up the country found their farms still far from the advantages of rail transportation, and the townspeople saw their business monopolized by the new trading points, with which they could not compete on account of the facilities the latter had through railway transportation.

But this kind of discrimination is less frequent, and with all its injustice and wrong is of less importance than those inequalities which arise from what is known as the "long and short haul." By this is meant the practice of giving to certain points on a railroad line widely separated from each other lower rates proportionately, and sometimes lower rates absolutely, than are given to intermediate points on the same line which are of course nearer each other. No detail of railroad practice has been the occasion of more diverse opinions than this. On one side it is denounced as a gross abuse of railroad power, and a crying evil and wrong. By railroad advocates it is warmly defended as just, beneficial, and wise. Such diametrically opposite views on the same subject by intelligent men must arise from the different points of view from which the subject is regarded. One is reminded of the old story of the shield with two sides, one of gold and the other of silver. And as in the fable, this subject has its two sides. The opinion entertained respecting the wisdom and justice of the long-and-short-haul discriminations will depend almost wholly upon the view held as to the proper end and function of a railroad. The first view looks upon it as a private business enterprise wholly or principally, whose main purpose is to obtain all the business possible, and swell its net earnings to the greatest attainable limit.

The second view is that a railroad is a public servant, created for the public good mainly, and intended to minister equally to the common welfare.

The first view subordinates the public welfare to the profit of the business, while the thought of the second view is that the railroads were built and exist for the people, and not the people for the railroads.

If it be conceded that the one purpose of a railroad is to do as much business as possible, to make money, and especially to increase "net earnings" at all costs, then it will be difficult to avoid the logic and arguments of the supporters of this practice.

These arguments are perhaps as ably stated by Mr. Alexander as by any of the railroad advocates. He says:

"One of the principal points at issue between the theoretical railway reformers and railway managers is, whether freight charges shall be based upon the cost of the service rendered or upon its value. Upon the answer to this question will depend the right or wrong of nearly all freight classification, and of most instances of charging less for a long haul than for a short. . . .

"The case of a railroad's estimating the cost of doing a particular piece of business is not unlike that of a lawyer estimating the cost of giving an opinion. He has fitted himself for that particular business, and, as it were, invested his life in the education and experience necessary to transact it. His time is good for nothing else, and, if he is not called upon for opinions, will be worthless to him. He can therefore render opinions up to a certain limit almost without cost, except for stationery. So a railroad is a large fixed investment capable of furnishing transportation and nothing else.

Up to certain limits it can always take additional business without cost, except for a very small amount of fuel. The money it receives for the new business above the small *additional cost* is all clear profit. It adds that much to the ability of the road to serve other patrons at low rates.

"It seems, indeed, to be unjust discrimination for a railroad to charge different rates for services that apparently cost it the same. It *is* discrimination, but when the *value* of the service is fairly considered, the injustice is but imaginary, and the results are beneficial even to those interests that seem to be discriminated against." *

Again he says: "Discriminations between places result from the fact that the same service has different values in different places. This difference is almost universally the result of natural features or geographical locations. The business of a railroad is simply the sale of *rapid* transportation. Slow but cheap transportation may be had between many localities by water, and still slower and more expensive transportation may be had by horses and wagons almost everywhere.

"To those already enjoying water transportation, transportation by rail offers comparatively few advantages, and they can only afford to pay a small sum for it. Nature has, so to speak, discriminated in their favor, and given them what we may call natural transportation. But she has discriminated against inland places, and left them dependent entirely upon artificial transportation by horse or man power, slow and expensive. Hence the service which the railway renders its inland customer is far more indispensable and val-

* "Railway Practice," pp. 2, 3.

uable to him than that rendered those who enjoy natural transportation, and he can afford to pay more for it. In fact, the railroad is built in general only for the service of the inland party, and it sells, as it were, its surplus power to the maritime party for any price it will bring. . . . As the railroads advanced, they enormously reduced the discriminations of nature throughout this inland territory. Thirty years ago it cost over a dollar a pound to carry from New York machinery and tools to work the mines of Utah, and the trip consumed the whole summer, during which the purchaser lost the use of his money. Now the trip requires but two weeks or less, and the rate is about two cents. Comparing these rates, and considering the character of the present service as compared with the old, it is not an exaggeration to say that the railroads have removed about ninety-nine one-hundredths of the discrimination against Utah which nature ordained in surrounding her with deserts and mountains." *

Prof. Arthur T. Hadley says: "Where a railroad is the only means of conveyance, it can charge what the traffic will bear without restraint. But where it comes into competition with a water route or with another railroad, its charges are brought down to the lowest possible figure. *The points where there is no competition are made to pay the fixed charges*, while the rates for competitive business will little more than pay train and station expenses. It is better to have business on those terms than to have it go by the rival route. In a railroad war this competition is carried beyond the bounds of reason. There was a time when cattle were carried from Chicago to New York at one dollar a car-

* E. P. Alexander, in "Railway Practice," p. 8.

load. These low rates develop the competitive point rapidly, while the higher rates retard the growth of the places where there is no such competition. When the competition is simply between railroads a pool may do away with these local differences by raising rates at the competitive point. Where one place has the benefit of water competition and another has not, it is hard to devise any effective means of getting rid of the differences. We are apt to think that because these local discriminations are an evil, it must be the fault of somebody. In our anxiety to get rid of the evil, we are apt to overlook the natural causes which led to it, and which sometimes must lead to it almost of necessity." *

It will be seen on careful analysis that substantially the entire argument for this practice of charging the same amount or less for a longer haul than is charged for a shorter haul over the same line is based upon the effort to increase net earnings. The thought of ministering to the public welfare by furnishing a public highway on equal terms to all who may wish to use it, which is the essential requisite of a public highway, is entirely lost sight of. It is true the claim is made that more trains are furnished than could otherwise be supported. But this claim is largely fallacious. In the first place, all through freight and passenger trains run a long distance without stopping, passing many stations between stops which are in no possible way benefited by these through trains. In many cases if the through trains were run as local freight or passenger trains, the traffic along the line would be stimulated and built up, the expenses of the trains would be offset by addi-

* "Railroad Transportation," p. 114.

tional traffic done at remunerative rates, and the vast economic waste of hauling great quantities of heavy freight thousands of miles over heavy grades or across wide stretches of wilderness would be done away. General Alexander makes the requirement that no freight shall be taken between competitive points except at such a rate that it shall pay something more than the additional outlay involved in doing it. He says, "Plainly the only limit at which the railroads should stop competing for through freight is at the *additional cash outlay* for doing it." What this exact limit might be in the case of any single shipment would be very difficult to determine, and it is certain that railroads have not limited themselves in all cases to this standard.

In 1888 General G. M. Dodge, a prominent and well-known railway official, said: "To my certain knowledge the Union Pacific road, of which I am a director, is doing a large amount of its business now as competitive business at a loss, and they have not the nerve to stand up and refuse it, because they are fearful that some other road will get it; and I know to-day that there is a large demand upon their road for every car they have got to do a paying business."

This testimony of General Dodge could be given by the directors of many other lines of road, if they would be as frank and truthful. So that the profitableness of this practice even to the railroads themselves may be seriously questioned. General Alexander, at the close of his argument, very cavalierly dismisses this long-and-short-haul question with the statement that as to it there is no railroad problem. But if we turn to the side of the effect of this practice upon the

public interests, it will be seen that there is a very serious problem, notwithstanding General Alexander's optimistic views. Before the Interstate Commerce Act was passed, and to a certain extent since that time, the effect of the long-and-short-haul discrimination has been to centralize business in certain great cities where competing rates were good. The rates for a car-load of freight from New York City to points in Colorado and Utah were much higher than the rate on the same car-load of freight carried through the same town to San Francisco, more than a thousand miles farther. The regular tariff to San Francisco was about five eighths of the rate to Ogden; while the war rate was less than three sevenths of the rate to Ogden.

In other words, the railroad charged for *not hauling* a car-load of freight one thousand miles from Ogden to San Francisco two and one seventh times as much as they charged for hauling it the entire distance. And this additional one thousand miles involved hauling the freight over great ranges of mountains where the grades are heavy, and the expense of hauling greater than for the average of the entire line. Something like the same ratio of charges for through business as compared with local trade exists on all the roads touching the Pacific Ocean. These astonishingly low rates for the long haul are defended on the ground that water competition must be met. And the Interstate Commerce Commission to a certain extent justifies this discrimination, permitting it subject to their regulation, under the provisions of Sections 2 and 4 of the Interstate Commerce Act, which allow varying charges under different conditions. The Commission, in an important case from Spokane, decided November 28,

1892, held that "water competition of controlling force exists at Pacific coast terminals for traffic from eastern points. And that the defendants [railways] are justified in maintaining higher rates at Spokane than the charge for competitive freight to coast terminals."

In this case, while sustaining the general principle that greatly reduced rates may be made to meet water competition, the Commission says: "Nothing but the stress of *unavoidable competition* can legalize the inequality resulting from higher rates for shorter than for longer hauls. It is evident, therefore, that no article should be carried to terminal points at commodity rates which, if the class rates were imposed, would still seek rail rather than water transportation. Any violation of this rule is an unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article." The Commission found the rates to Spokane unreasonably high in spite of the concession for water competition at the coast terminals, and ordered a reduction of the Spokane rates.

In October, 1891, and in January, 1892, the railroad commissioners of the State of Georgia, under the provisions of Section 13 of the Act to Regulate Commerce, brought before the Interstate Commerce Commission seven important cases involving alleged illegal discriminations along a complex system of railways. The questions in these cases were very difficult on account of the competition at various points between all-rail lines of transportation and lines composed in part of carriers by water and in part by rail. After a full and careful consideration the Commission, while condemning indiscriminate reductions of rates at competitive points to meet all-rail competition, reaffirmed (with

one slight modification) the decision in the Louisville & Nashville Railroad Company case reported in 1 Interstate Commission Report 278, in which water competition was recognized as constituting such dissimilar circumstances and conditions that a less charge for a longer haul could be made on freight to the competitive points under the provisions of Section 4.

It would seem as if in making these discriminations in favor of places where water carriage is available the Interstate Commerce Commission had yielded largely to the commercial idea of the railway system, and had been influenced mainly by that view of railroad operations which looks only or principally to increasing net earnings. On any other theory it is difficult to harmonize these decisions referred to, construing the long-and-short-haul clause of the Interstate Commerce Act, with the principles which the Commission itself has laid down concerning railroad operations. In the Sixth Annual Report the Commission has set forth principles respecting the railway system, which must commend themselves to every fair-minded person as expressive both of law and justice in the relations of the railroads to the public.

The Commissioners say: "The railroad is justly regarded as a public facility which every person may enjoy at pleasure, a common right to which all are admitted, and from which none can be excluded. The essence of this right is equality, and its enjoyment can be complete only when it is secured on like conditions by all who desire its benefits. The railroad exists by virtue of authority proceeding from the State, and thus differs in its essential nature from every form of private enterprise. The carrier is invested with extraordinary

powers which are delegated by the sovereign, and thereby performs a governmental function. The favoritism, partiality, and exactions which the law was designed to prevent resulted in large measure from a general misapprehension of the nature of transportation, and its vital relation to commercial and industrial progress. So far from being a private possession, it differs from every species of property, and is in no sense a commodity. Its office is peculiar, for it is essentially public. The railroad, therefore, can rightfully do nothing which the State itself might not do if it performed this public service through its own agents, instead of delegating it to corporations which it has created. The large shipper is entitled to no advantage over his smaller rival in respect of rates or accommodations, for the compensation exacted in every case should be measured by the same standard. To allow any exceptions to this fundamental rule is to subvert the principle upon which free institutions depend, and substitute arbitrary caprice for equality of right." *

The Code Justinian says: "Justice is the constant and perpetual desire to render every man his due."

The application of this far-reaching and enlightened definition of justice to railroad affairs would remove many of the evils of which the people rightly complain. And it would inaugurate a sweeping reform in the long-and-short-haul problem. If the railroad is regarded only as a public servant ministering to the public good, it is difficult to see how the public as a whole can be benefited by such an economic absurdity as the long haul. The argument is that towns where water

* Advance copy "Sixth Annual Report Interstate Commerce Commission," p. 7.

transportation is available have a discrimination in their favor by nature, which gives them low rates on account of the cheapness of water transportation. And *therefore*, so the argument runs, the railroads must make rates to these towns to compete with the water rates. A more striking instance of perverted logic through the distortion of private interest has never existed.

By what syllogistic deformity the conclusion is supposed to follow the premise in this case, I am unable to conceive. The argument is, that since these towns are favored by nature, they should also be favored by human effort and intervention. Bearing in mind the fact that in a modern republican State all men are supposed to have equal conditions so far as governmental functions go, and that it is an atrocious misuse of social power to employ it to give special advantages to a few out of the whole State or nation, one would suppose the argument would be as follows: Since certain towns *are* especially favored by nature, *therefore* they should *not* be specially favored by governmental forces or human appliances. Government should be a protection and help to the weak, and if favors are to be given by it, or by any of the forces it sets in motion, they should go to the less strong and the less favored instead of to the strong and those who have already special advantages. But by the long-haul absurdity all that is reversed, and the low rates are given to those cities where, through water transportation, special advantages already exist, and through the workings of the laws of trade, this is inevitably a discrimination unfavorable to towns against which nature has already discriminated. It must be constantly borne in mind

that railroads are designed to help overcome the obstructions of nature and the difficulties which it has piled up against certain places. But under present railway practice this invention designed to be helpful becomes a positive detriment and injury. Lawyers have been credited with being able to make the worse appear the better reason, but in this line they must yield the palm to railway advocates. A most striking instance of this is the very ingenious argument of General E. P. Alexander in favor of the long haul, which is quoted above.

In the second quotation from Alexander he argues very plausibly that since the railroads have enormously reduced the price paid for carriage of freight to and from the inland towns below the charges for transportation by wagon, therefore the value of the service to the inland shipper is proportionately as great or greater than is the service to the farther point, even if the rate is two or three times as much. But the reduction to the coast terminal, say San Francisco, is much greater even than to Ogden. Here some one will say it would be absurd to haul freight from New York to Chicago or San Francisco by wagon. It could go much cheaper by water. But it is likewise absurd to haul heavy freight thousands of miles overland by rail, climbing steep grades, lifting up with the freight also the dead weight of locomotives, fuel, water, and cars thousands of feet to cross the mountain ranges. The difference between haulage by wagon and by cars is a difference in degree and not in kind.

It is claimed that it is profitable to carry such freight to competitive points even if no more compensation is obtained than is just sufficient to pay for the train ser-

vice for such transportation. Nothing is gained to apply on interest upon bonds or dividends on stock; nothing for repairs of road-bed or replacement of rails when worn out, or to purchase new rolling stock; nothing to pay for freight destroyed, or lives or limbs lost by accidents; nothing for taxes or legal expenses or the thousand and one outgoes of a railroad. But all these expenses must be met if the railroad is to be maintained, and necessarily the local traffic must bear an undue proportion of them. If the through trains pay only for the train service, that is, the bare cost of the "physical movement," as it was called on the argument in the Spokane case, then the local traffic must bear not only the cost of its train service and its fair proportion of fixed charges and miscellaneous expenses, but it must bear also that proportion of these charges and expenses which ratably belongs to the through traffic. That is, the local traffic pays *all* the fixed charges and dividends and miscellaneous expenses, and through traffic pays cost of its physical movement. In the Spokane case the railroad claimed that its through rates to Portland paid something more than cost of service and so increased net earnings. The rate to Portland, 2056 miles, was about $30 per ton, while the rate to Spokane, 1512 miles, was $52 per ton. The Commission well says, in delivering its opinion in that case: "If a rate of less than one and a half cents per ton per mile yields a desirable margin over the bare cost of moving the traffic, may we not fairly infer that a rate of nearly three and a half cents per ton per mile pays an unwarranted return upon the whole investment? The difference between these figures is too great to permit the lower charge to be justified by

the rule of expediency without condemning the higher charge by the rule of reasonable compensation. The fact that through business is sought at these terminal rates leaves no doubt in our minds that the Spokane rate is excessive."

This Spokane case is simply an illustration of what has been going on and is still going on, in spite of the Interstate Commerce Act, in local traffic all over the vast region west of the Mississippi River. Nor is it confined to the West. In the Georgia case it was shown that the rate to a non-competitive town, Marietta, was six times as much per ton-mile as the through rate from Cincinnati to Atlanta. The enormous disadvantage which such rates impose upon business men in non-competitive towns can be seen at a glance, and when we understand that these rates are applicable to the vast majority of inland towns, it will be at once seen that all this great inland territory is made tributary to the competing points, and is in effect taxed heavily to afford special advantages to the business men at the competitive points. Mr. Alexander, in referring to Mr. Hudson's use of the shameful disclosures in the matter of discriminations made public by the Hepburn Committee, rather slightingly alludes to these as "ancient history." But discriminations now existing differ only in degree, and not at all in kind, from the revelations made by the Hepburn Committee. It is not ancient history that the business men of Spokane have been charged two or three times as much for freight haulage as the men of Portland, nor that the business men of Marietta have been charged six times as much proportionately as those in Atlanta. And these two cases are simply illustrations of which thousands more are in

existence. As has been well shown by Simon Sterne, it is not the actual rate but the relative rate which constitutes discrimination. If business men at Santa Fé and Albuquerque equally pay $100 per ton for freight, they are on an equality; but if a railroad should make a rate of $20 per ton to Albuquerque and $25 per ton to Santa Fé, business men of Santa Fé would be ruined.

In a noted case it was shown that the railroads charged less than one third as much for the transportation of a car-load of cotton from Memphis to the city of New Orleans as they charged for a car-load of cotton from Winona, a town one hundred and seventy-five miles nearer New Orleans. This was equivalent to hauling two car-loads for the shipper in Memphis for absolutely nothing from Memphis to New Orleans, and charging no more for hauling a third car for the Memphis shipper than was charged the shipper at the nearer point. Even this outrageous discrimination was defended by one of the most prominent railroad officials of the country. A common method was to charge the through rate to the competing point and add the return local charge from that point to the interior town.

This practice prevailed on eastern roads as well as western, and, as Charles Francis Adams well states it, the railroads charged more for *not* hauling a car-load of freight a greater distance to a competing point than they charged for hauling it the increased distance. As shown by ex-Governor Larribee of Iowa, the charge for hauling a car-load of wheat across the State of Iowa was twice as large as for transporting the same wheat twice as far, across the State of Iowa and the State of Illinois to Chicago.

It seems to be assumed in much of the discussion of the long-and-short-haul question that railroads for some unexplained reason must necessarily compete with water carriage. But there is no such necessity, nor is there any possible economic excuse for it, so far as heavy freight is concerned, except the effort to increase net earnings. When freight is of a perishable character, or articles like dry goods or clothing are needed at special seasons to supply the demands of fashion or meet the exigencies of the climate, prompt delivery is desirable and there is a valid reason for railroad transportation. The superiority of carriage by railroad due to the saving of time justifies such transportation for this class of goods, and also justifies a charge sufficient to pay all legitimate expenses connected with it. To attempt to compete with nature by hauling heavy freight at competitive rates is a perversion of the proper use of the railroad and an economic absurdity.

The excessively low rates at certain competitive points gave an overwhelming advantage to shippers located there, and as a result business men were attracted to these points in great numbers. The rush of business and the increase of population and wealth in these great cities is easily seen and makes a deep impression, but the converse of this, that is, the effect on the interior towns and on the farms, is not always so well understood. The low rates for the long hauls, especially to competing points, are defended on the ground that competition of other lines or even of water rates must be met. And so it has often been alleged that it is advantageous to the railroads to make these long hauls to competing points if necessary without

profit, in order to keep up their business. But profit must be gained by the railroads from some source, and so the low rates to competitive points were amply compensated by exorbitant local rates. The local shipper was compelled to pay two or three times as much as the through shipper in order that competing points might have special advantages. In other words, every small town and every small shipper and every farmer in all the Northwest, without their consent and often without their knowledge, were compelled to pay tribute to some competing city like Chicago, thus ministering to its prosperity at their own damage and loss. The people living in the small towns saw their business gradually growing less and less; the farmer saw his profits cut off by excessive railroad charges and the value of his farm depreciating correspondingly. The result was that in spite of the great natural richness of western farming lands and the natural uplift in their price due to increasing settlement, the farmers as a class, although aided by great natural advantages, were constantly engaged in a hard struggle to make up for the commercial tribute levied on them to keep up this atrocious system of discrimination.

Mr. Alexander assumes that there is no problem connected with the long and short haul. The gross iniquities of this class of discriminations were supposed to have been done away by the passage of the Interstate Commerce Act. But on account of the provision contained in Section 4, that this class of discriminations could be permitted if the transportation should not be carried on "under substantially similar circumstances and conditions," it was claimed that the competition between rival lines of railroads at competing points

constituted an exception to this law, and justified decreased rates. The Commission has decided that this fact alone does not constitute an exception or justify low rates under the provisions of Section 4. They have, however, sustained the discrimination in the case of competition with water transportation, as stated above. A few illustrations of the effect of these discriminations which have come under observation of the writer may be given. A friend and business associate of the author a few years ago obtained anthracite coal in Chicago, shipped it to Omaha, and then re-shipped it from Omaha to the town of Grinnell, Iowa, 225 miles in an almost direct line toward Chicago. He was able to deliver the coal in that place cheaper than local coal dealers could supply it, although it had been hauled nearly three times the distance necessary to bring it to Grinnell directly. A large manufacturing establishment located in the latter town, making agricultural implements which were sold principally on the Pacific Coast, found it advantageous to abandon its plant and transfer its machinery and employees to Chicago on account of the unfavorable rates. It could make a fair profit on every car-load of these implements by shipping them 300 miles farther directly through their former location to the Pacific points.

A large factory for making barbed wire, located in the city of Des Moines, in like manner abandoned its buildings and transferred its establishment to Chicago, finding that it saved a large sum on every car-load of wire it shipped, although the wire was mainly carried directly by or through its old location, 360 miles nearer the Pacific Coast than Chicago. These all occurred after the passage of the Interstate Commerce Act, and

merely illustrate what was going on in a dozen great States where cities, towns, and villages were being depopulated or their business establishments placed at great disadvantage by reason of this iniquitous discrimination. One small town in the State of Iowa, which had thriven under reasonable railroad facilities, was almost depopulated by a change of ownership of the railroad line upon which it depended and a management which subjected it to the long-and-short-haul discrimination. Comfortable and happy homes had been built, schools and churches maintained, and the community was prosperous. It never expected to be a great city, as Mr. Alexander rather caustically insinuates all villages do, but its people were intelligent and industrious, and were supporting happy homes and the institutions of civilized life. As the result of this discrimination forty American families were driven out of this small town in a single year. Their property was rendered almost worthless, and with great pecuniary loss from no fault of their own they were obliged to abandon their homes and seek new habitations and new avocations. Cases like this were abundant throughout the West. The long-and-short-haul iniquity destroyed thousands of homes and crowded the people into great cities, leaving the smaller towns to depression and decay. The people flocked into the competitive cities in great crowds, and unheard-of "booms" took place, astonishing and startling all conservative observers. When the competitive rates were removed, as in all cases they must be soon, the inflated building and business interests of these "boomed" towns collapsed, and this apparent prosperity, due to the hotbed of discrimination, vanished like a dream. Until

the manifold evils which this kind of discrimination has inflicted upon the West and Northwest are swept out of existence, it may be considered certain that there is a long-and-short-haul problem which cannot be dismissed by an epigram, but will tax the resources of the wisest statesman.

The third class of discriminations referred to above is that in favor of or against individuals. This discrimination no one has had the courage to defend. It is denounced equally by railroad managers and writers on railway subjects. It is clearly against any right principle of railway practice, as it is also hostile to that "equality of right" which the Interstate Commerce Commission says is a fundamental principle in the use of railroads. Before the passage of the Interstate Commerce Act these personal discriminations in favor of individuals or corporations were carried to an extent almost beyond belief. Favored shippers were given special rebates by one device and another, through which they were able to pay a higher price for grain, or sell flour or any other commodity at a lower price than their competitors and still grow rich, while their competitors were forced into bankruptcy. Every principle of justice and right pertaining to the exercise of a function belonging to the government, the very essence of which is equality, was shamefully violated. The most striking example of this outrageous discrimination is the frequently cited case of the Standard Oil Company, to which rebates amounting to $10,000,000 were paid in sixteen months. This company gained its immense monopoly and prodigious wealth largely from a skillful use of this class of discriminations.

But immense as the sum was which was paid to this

corporation, it was small indeed compared with the aggregate of rebates and drawbacks and other kinds of favoritism paid in all the cities and towns throughout the South and West. The aggregate of these shames the vast wealth of even the Standard Oil Company.

In a small town of Iowa judgments for nearly $40,000 were recovered against a single railroad for illegal discriminations in that one town. In northwestern Iowa suits have been threatened to recover damages for these discriminations, in behalf of nearly thirty shippers. It is estimated that the total amount of these discriminations in this small section of the Northwest will amount to $1,000,000. The discrimination in some cases was the large sum of $40 per car. It is not probable these were the only parties in Iowa against whom such discriminations were given, nor is it probable they were limited to any one State. These cases, too, were all subsequent to the Interstate Commerce Act.

It is undoubtedly true that this Act has diminished this illegal practice, and if the principles of the Act and the rulings of the Commission are carried out, it will be largely done away with. But in the stress of competition which the system of private ownership in rival roads always necessitates, new devices and new schemes for evasion of the law are constantly arising in spite of the Act.

It is noticeable with what vigor Mr. E. P. Alexander assails this class of discriminations. He is at swords' points with Mr. Hudson on every other subject, but reiterates and emphasizes the denunciations of the latter, which are severe enough against this practice. But Mr. Alexander, as we have seen, vigorously defends

the long-and-short-haul discrimination and the practice of giving lower rates at competitive points. If we recall the fact that cities are simply aggregations of individuals, it is difficult to see on what ground of principle Mr. Alexander can defend giving competitive rates to a large number of individuals called a town or a city, and denounce so vigorously giving special rates to a single individual. I cannot see why it is not a hundred times worse to give special discriminations to a hundred shippers in a town than it is to give a special rate to one individual. The difference is one of degree and not of kind. In other words, it is a hundred times worse to make a long-and-short-haul discrimination than it is to give a single individual a special rate. The only possible reason upon which a defense of this practice can be explained is that discriminations to single individuals rarely increase net earnings. It is therefore not in favor with railroad managers. On the other hand, special rates to competitive points are supposed, rightly or wrongly, to increase net earnings.

CHAPTER VII.

RAILROADS ARE PUBLIC HIGHWAYS.

Railroads Public Highways.—Hudson's Proposed Reform.—Cook's Criticism.—Much Transportation done now on Hudson's Plan.—Professor Hadley's Criticism that Hudson's Plan is not Economical.—Hudson's Plan does not reach the Causes of Railroad Troubles.—Adams calls Comparison of Railways to Public Highways a Mischievous Analogy.—History of Railroad Charters.—Railroads declared to be Highways by Federal and State Constitutions and Statutes.—Opinions of Eminent Jurists.—Decisions of Supreme Court of the United States.

A MOST interesting and instructive discussion of railway subjects is contained in Hudson's work entitled "The Railways and the Republic." This book enters fully into many phases of this problem, which it is not the purpose of the writer to touch upon to any considerable extent. But the purpose of Hudson's work is to advocate as a solution of the railway problem a return to the principles upon which railroads were at first based. They were first thought to be public highways pure and simple, over which every person had a right of transportation for his own vehicles just as he had a right to drive his carriage or freight-wagon over a turnpike or other public road, paying to the owner of the road a fair compensation by way of toll. Mr. Hudson makes a comprehensive and powerful argument for a return to the original idea. He would limit railroad corporations to the business of furnishing

the road-bed and track, together with station and terminal facilities, leaving to the shipper the right to furnish his own motive power and cars on payment of a reasonable toll, which should be the same to all persons for the same class of service and distance of transportation. If it would be wiser, practically, for the railroad company to supply the motive power, this could also be added to their functions. At first sight it would seem that this would cause endless confusion and uncertainty, and perhaps a greatly increased number of accidents. But this objection is more apparent than real when carefully examined. Mr. Hudson is enthusiastically convinced that this plan would be a complete solution of all the serious difficulties and of all the injustice and inequality which the present system has developed. He says:

"It is not hard to picture the effect of such a reform upon the railways. Let the right of every person to run a railway train over any track to which he may take his engines and cars be placed upon the same basis as the right to run a steamer over any river, or a canal-boat over any canal, and the practices of combination and discrimination, which distinguish the use of the railways from that of other highways, will vanish. It is not claimed that this would bring a millennium in transportation. Common carriers would still grasp excessive profits, if they could; and some railway officials would doubtless be willing to enrich themselves by an illegitimate exercise of any powers within their reach. But the leading evils which are the subject of this work would be effectually and permanently cured, by demolishing their causes; with the right of carrying freight over the railways, free to all on equal

terms, the power of railway corporations to enforce discriminations, and to build up other monopolies by combinations with other railways, would be destroyed.

"The first effect of the reform, if it merely gave each railway the right to send its trains over connecting tracks, would be to destroy the possibility of artificially sustaining rates by pools. . . . Another effect of this reform, no less valuable, would be the permanent abolition of all vital inequalities and favoritism to shippers, by destroying the power of the railways to make such discriminations. It has been seen that this power rests entirely in the exclusive control by each railway of transportation over its own track; so that a number of railways can combine to favor or oppress an interest or an industry. Make the privilege of transportation free to all, and this power is utterly destroyed. . . . Such a reform would prevent the greater roads from first freezing out, by discriminating rates, and then absorbing, all the branches and feeders dependent on them; and thus end a practice as hostile to the railway system as to the interests of the public at large. In short, the reform proposed will afford a practical solution of every issue between the railways and the people."*

These and other important points are brought out clearly by Mr. Hudson and sustained by strong arguments. It may be conceded that this reform would not accomplish all he anticipates for it. But his argument is altogether too important and weighty to be dismissed with so curt a criticism as that contained in Cook's treatise on "The Corporation Problem." He says: "Mr. Hudson's plan has been dead for fifty

* Hudson, "The Railways and the Republic," p. 400 et seq.

years." * This criticism has the merit of brevity, but as a matter of fact it is not entirely accurate. There is a large amount of transportation on the railroads of the United States which is now carried on practically upon the plan proposed by Mr. Hudson.

Every fast freight line and every car trust running over a railroad other than that to which the car trust belongs, or of which it is an offshoot, is a modification of this plan. Besides this, we have the great Pullman Palace Car system, and the Wagner Car system, and others of the same character, each of which is a shipper furnishing cars to run over railroads not owned by it. The enormous express system of the United States is in principle substantially the same thing, and this is no mean part of the entire transportation system of the country. By the report of Prof. Henry C. Adams, statistician to the Interstate Commerce Commission, for 1890, it appears that the express companies of the country paid to the railways for the year ending June 30, 1890, more than $20,000,000 for the privilege of operating over their lines. This, as stated by Professor Adams, is nearly one and three fourths per cent. of the total income of the railways.

But besides this, all the railroads in the country freely interchange cars one with another, and cars belonging to California roads are found in New England, and cars belonging to Florida roads may be found in Minnesota.

The cars on all the numerous railroads of the country pass freely over every other line, according to the destination of the freight they contain. This in principle is precisely the same thing advocated by Mr.

* W. W. Cook, "The Corporation Problem," p. 121.

Hudson, so that Mr. Cook's statement that Hudson's plan was dead fifty years ago is quite inaccurate.

The further objection to Hudson's plan made by Mr. Cook, that, if adopted, it would simply result in the creation of two corporations instead of one, is more weighty, although not so formidable as it would appear. And even should this be the result, some advantages would certainly be derived from the plan.

But a more serious objection is that urged by Prof. Arthur T. Hadley, that this plan would be wanting in economy. As the inevitable tendency is and must be constantly toward cheaper rates, if this objection is well founded, as it appears to be, it would be fatal to the success of this scheme.

An insuperable objection to this plan arises from the seeming impossibility to control the railways as at present organized and owned, by any rule of statute law or by the power of State constitutions. Mr. Hudson's own work shows this in a striking way, although he does not seem to see its application or force against his proposed reform. After showing that the constitutions of a large number of States declare the railways to be public highways, and that these States and many more prohibit discriminations, pools, rebates, and other abuses of the railroad system, he says:

"The dangerous power of the railway interest is apparent in the fact that in twelve States of the Union it is able to nullify and override the constitution. To violate statute law is bad enough; but this defiance of constitutional provisions exhibits the railway power as endangering the rule of the people and threatening to make corporate dictation supreme. In the twelve States whose constitutions forbid discriminations it is

safe to say that the prohibition is secretly violated every day in the year. In the nine States in which pooling is forbidden the constitutions have been openly defied for the last six years. In the five States in which rebates and drawbacks are prohibited, and the same number in which the short-and-long-haul discrimination is forbidden, these constitutional and statutory provisions are simply ignored by railway magnates who are stronger than the constitutions and the laws." *

If the railways are so much stronger than the constitutions and the laws of the States under the present system, and ignore the rules prescribed by them, is it not apparent that they would do the same if a law were enacted the object of which should be to authorize all shippers to use railway lines for their own cars? The fatal defect in Mr. Hudson's plan is that it does not go to the root of the difficulty. Just so long as the railways have conflicting interests—that is, just so long as there are antagonistic systems of transportation owned by individual capital, and each railroad strives to make all the profit possible for the capital invested in that one road—it is apparent that there will be temptations to discriminations and favoritism which will be too great to be resisted. The only sure remedy for these evils is to remove their cause. It has been found impossible to correct them by State or national enactments, and it would be equally impossible to enforce statutes prescribing the adoption of Mr. Hudson's plan. The motive to disobedience will still remain, and the power to disobey would be just as great as heretofore.

* Hudson, "The Railways and the Republic," p. 152.

But the theoretical principle upon which Mr. Hudson's plan is based—namely, that the railroads are, and of right ought to be, public highways, over which every shipper must have an unquestioned right to transportation on equal terms with every other shipper under the same conditions—is the foundation principle upon which the railway system is based, and to depart from this would be commercial slavery and ruin to the nation.

In making the assertion that railroads are, and of right ought to be, public highways, it is not forgotten that so eminent an authority as Charles Francis Adams has ridiculed the comparison of railways to public highways, and has called this comparison a mischievous analogy.* It is never supposed by any one that railroads are precisely similar to common roads or turnpikes, on which vehicles of all classes and sizes pass freely in either direction and are drawn by any kind of motive power, whether furnished by men, animals, steam, or electricity. No one will dispute the assertion that canals are public highways, but no one drives a stage-coach along a canal. It is none the less a public highway because a loaded wagon cannot be drawn on its surface by horse-power. Nor is a turnpike any the less a public highway because a canal-boat cannot float along its surface. Each kind of public highway has its own peculiarities and its own method of conveyance. The railroad is a much more effective and powerful highway than any of its predecessors, but it is a highway nevertheless. The fact that in the majority of cases the vehicles running over a railroad belong to the owners of the road-bed is

* "Adams on Railways," p. 83.

only one of the particulars differentiating this highway from others.

It is noticeable that Mr. Adams gives no name to this method of transit, which he says is not a highway. He testifies truly to its wonderful efficiency and power; but the most definite name he gives it is "a great formative influence." This, as far as it goes, is correct but not altogether complete. One is reminded of Plato's definition of man as a "biped without feathers," and the humorous destruction of this definition by Diogenes, who plucked the feathers from a fowl, saying, "This is Plato's man."

Every public highway, from the time the first rude path was hewn out of the forests by the earliest savages to the time of the splendid military roads of Imperial Rome, has been a great formative influence. The Erie Canal revolutionized the internal commerce of the United States as it existed before the canal was built, and made New York the unquestioned commercial metropolis of the New World. No railway system, however great and powerful, has done more. At a critical period the splendid New York Central Road once more conquered for New York its commercial domination, imperiled by its Southern rivals. But this service was no greater than its earlier and slower prototype had performed in its day.

The consentient voice of public opinion in all civilized countries has proclaimed the truth that railways are public highways. The harmonious decision of the courts of Christendom almost without exception has reaffirmed this truth. The constitutions and legislation of many States have written this principle into the very heart of our legal system. It has been well said that

there is somebody wiser than anybody, and that is everybody. And it may well be assumed that Mr. Adams is not wiser than everybody.

It is not the purpose of this work to give a full review of all the legal decisions establishing the proposition that railroads are public highways. A few leading authorities only will be referred to.

In the Supreme Court of the United States, at the October term in 1876, two remarkable cases were decided, entitled, Lake Superior & Mississippi Railroad Company *v.* The United States; and, The Atchison, Topeka & Santa Fé Railroad Company *v.* The United States, on appeal from the Court of Claims. Reported in 93 U. S. Supreme Court Reports, p. 442.

The Federal Government, to aid in the construction of these two roads, had made to each road large grants of lands. With each grant the following condition was made: "Said railroad shall be and remain a public highway for the use of the United States, free from all toll or other charge for (or upon) the transportation of any property or troops of the United States." The sole question at issue in the two cases was the construction of the words, "free from all toll or other charge for the transportation of property or troops." It would seem as if there could be no question as to the meaning of these few simple words. To the ordinary man of intelligence it would seem that these words mean precisely as they state, that the transportation of property and troops over these roads should be without expense to the Federal Government. The word "transportation" is derived from two Latin words, *trans*, over or across, and *porto*, I carry. They are applied to the carriage of persons or goods over a

wagon-road, a railroad, a river, or the sea. In the latter case, two words derived from the same principal root are used, according to the direction the goods take; thus, the carriage of goods out of a country being called exportation, and into a country, importation. Now the United States Government, as a condition precedent to this grant, required each road to contract that it would make no "charge for the transportation" of persons or property for the Federal Government; that is, that it would make no charge for the carriage of property or troops over its road, since this is the meaning of the word "transportation." And since there must be two parties to every contract, each of these roads, in accepting this grant of lands with this condition attached, agreed that it would make no charge for the carriage of persons or property belonging to the United States over its roads. It would seem that nothing could be plainer than this contract, but the Supreme Court, by a majority of five to four, decided that this plain, common-sense meaning of these words was not their legal meaning, but they meant only that no charge could be made for the use of the road-bed, and the Federal Government must either use its own motive power and cars or pay for the services of the road in actually doing the work of transportation.

The majority opinion was written by Mr. Justice Bradley, and is remarkable for its learning and subtility. The dissenting opinion of Mr. Justice Miller is no less learned and able, and, to the mind of the writer, is much the weightier opinion.

The point decided is not material except as showing the facility with which corporations are able to evade the plain provisions of acts through which they have

received not only immensely valuable franchises but large gifts of public property as well. But it will be seen that Congress in creating these roads declared them to be public highways, and, in the learned opinion of Mr. Justice Bradley, careful research into the early history of railroads is manifest. I avail myself freely of the material furnished by these two opinions without further acknowledgment.

The acts of Congress brought into question in these two cases were passed in 1863 and 1864 respectively. But Congress, for a long period, had been making grants for internal improvements containing precisely the same reservation.

In 1824 Congress made a grant of land to the State of Indiana to aid in the construction of a canal connecting the Wabash River with the Miami River, making the reservation, "That the said canal, when completed, should be and forever remain a public highway for the use of the Government of the United States, free from any toll or charge whatever, for any property of the United States or persons in their service in public business passing through the same." *

A similar act was passed in 1827 granting land to the State of Illinois to aid in the construction of a canal uniting the Illinois River with Lake Michigan. Six years later, an amendment was passed providing, "That, if a railroad is made in place of a canal, the State of Illinois shall be subject to the same duties and obligations and the Government of the United States shall be entitled to and have the same privileges on said railroad which they would have had through the canal if it had been opened."

* Fourth U. S. Statutes, 47.

In England, in 1842, an act of Parliament was passed providing that all persons should be entitled to the use of railways and might put their own carriages thereon upon payment of a fixed toll, subject to the provisions of the statute and the regulations of the company.

One of the earliest railroad charters in the United States was granted by the legislature of New York, in the year 1826, to the Mohawk & Hudson Railroad Company. That charter contained the following provision: "And (said company) shall have power to regulate the time and manner in which goods and passengers shall be transported, taken, and carried on the same, as well as the manner in which they shall collect tolls and dues on account of transportation and carriage, and shall have power to erect and maintain toll-houses and other buildings for the accommodation of their concerns."

In 1828 the same legislature passed an act giving a charter to the Ithaca & Owego Railroad Company in the following language:

"Section 9. The said corporation shall have power to determine the width and dimensions of the said railroad; to regulate the time and manner in which goods and passengers shall be transported thereon; and the manner of collecting tolls for such transportation; and to erect and maintain toll-houses, etc.

"Section 11. The said corporation may demand and receive from all persons using or traveling upon said rail the following tolls, to wit: for every ton-weight of goods, etc., three cents per mile for every mile the same shall pass upon the said road, and a ratable proportion for any greater or less quantity; for every pleasure-carriage, or carriage used for the con-

veyance of passengers, three cents per mile in addition to the toll by weight upon the loading.

"Section 12. All persons paying the toll aforesaid may, with suitable and proper carriages, use and travel upon the said railroad, subject to such rules and regulations as the said corporation are authorized to make by the ninth section of this act."

In the State of New Jersey the same legislative intent is manifest in charters granted to the Camden & Amboy Railroad Company in 1830, and in that of the New Jersey Railroad in 1832.

In Pennsylvania the Supreme Court of that State, in determining the construction of the charter of the Philadelphia & Reading Railroad Company, held that the charter of that company made the road a public highway open to the use of all persons on conforming to the regulations of the company, but further decided that the legislature, in fixing the amount of toll which the road could charge, refers only to the use of the road-bed and not to the service of the railroad as a common carrier in the actual transportation of goods.

In Missouri the legislature of that State in 1837 created the Louisiana & Columbia Railroad Company, making the provision in its charter that the company should have power to prescribe the kind of carriage to be used on its road, by whom, whether to be propelled by steam or other power, all cars being subject to the discretion of the company, and no person to put any carriage on the road without its permission; and the company was authorized to charge "tolls and freight for the transportation of persons, commodities, or carriages on the road"; and it was declared that the State and the United States should have the right, in time

of war, to use said road in transportation of troops or munitions of war in preference to all other persons.

The Congress of the United States in 1852 made a grant of land to the State of Missouri to aid in the construction of this road, then known as the Hannibal & St. Joseph Railroad Company, in which the reservation was made: "That the said railroad shall be and remain a public highway for the use of the Government of the United States."

In 1862 and 1864, and in subsequent years, Congress by various acts created a large number of railroad corporations, among them the Union and the Central Pacific Railroads, the Northern Pacific Railroad Company, and the Southern Pacific Railroad Company, with others not necessary to specify. In all of these acts the roads are designated as public highways, and in one form of expression or another are required to be military and post roads open to the use of the United States. Thus it will be seen that the legislatures of many States, as well as the Congress of the United States, by an uninterrupted series of acts, beginning with the first inception of the railway system and continuing down to the present time, have declared railroads to be public highways. In the constitutions of a large number of States the same principle has been made a part of the fundamental law of these States.

By the authority of many eminent jurists the same principle is maintained. Thus, in "Cooley on Taxation" (p. 94), that eminent jurist says: "One of the most important functions of government is the making provision for public roads for the use of the people. The variety of these is great, and the modes of construction and operation are different. No question is

made of the competency of the legislature to levy taxes for the common highway, the improved turnpike and macadamized road, the planked or paved street, the canal, the tramway, or the railway. Any or all of them may be constructed by the State, or, under State authority, by the municipal subdivisions of the State within whose limits they may be needed. They may be supported and kept in repair by taxation of the State or of proper districts, or private corporations may be invested with the franchise of constructing them and taking tolls for their use."

In "Borroughs on Taxation" (p. 12), it is said: "An attentive examination of the cases will show that there is really but one opinion as to the construction of a railroad being a public purpose, so as to justify taxation upon the whole State, either for the purpose of subsidizing such companies or of building it by the State. It is but an improved highway, and the propriety of opening roads, that the citizens of a State may communicate with each other for the purposes of business or pleasure, has never been questioned in any country." See also "Redfield on Railways," vol. ii., sec. 230 and notes.

In "Mills on Eminent Domain" (p. 17), it is said: "Although a railroad corporation may be a private one, yet its work is public as much as if the road were constructed by the State. Upon no other ground than that the purpose is public can the exercise of the power of eminent domain in behalf of such corporations be supported. On this ground alone rests the authority for the issue of bonds to assist railroads, and of taxation to meet the same. Railroads are, in fact, public highways. The circumstance that the railroad com-

pany uses its own cars exclusively is not material, or that the tolls are collected for its own exclusive use."

A recent and able work on the law of eminent domain has been published by John Lewis, Esq., of the Chicago bar. In Section 170 of this work the author says: "When railroads were first introduced, some question was made as to their being a public use, but it has long been settled that they are. A railroad company may be authorized to condemn land for all appurtenances necessary to the convenient and proper operation of the road, such as depots, freight-houses, yard room, and the like." *

But in addition to this great weight of authority from legislative and congressional action and the opinions of distinguished jurists, the decisions of our courts, almost without limit and with little conflict, have decided in almost every form of expression conceivable that railways are public highways. It is not necessary to cite here to any extent the many and able opinions of State courts; a few of the leading cases in the United States Supreme Court only will be referred to.

One of the earliest decisions in that court in which this principle is explicitly laid down is that of Rogers *v.* Burlington, 70 U. S. Supreme Court Reports, decided in December, 1875. I quote from page 663 of the opinion, which is by Mr. Justice Clifford. He says: "Railways, also, as a matter of usage, founded

* The author of this able and exhaustive work is not a relative of the writer, although having the same surname, but we were classmates and sat side by side at Yale for four years. The qualities of careful, patient scholarship and thorough research shown in this book are but the larger growth of the same qualities manifested in the classroom.

on experience, are so far considered by the courts as in the nature of improved highways, and as indispensable to the public interest and the successful pursuit even of local business, that a State legislature may authorize the towns and counties of the State through which a railway passes to borrow money, issue their bonds, subscribe for the stock of the company, or purchase the same with the view of aiding those engaged in constructing or completing such a public improvement."

In the dissenting opinion of Justice Miller in the cases referred to above, that able and upright judge uses the following language: "Railroads, such as we have described them, and limited in the manner of their use to their own rolling-stock, managed by their own officers, are, if not technically so, really public ways. They exist nowhere except by statutory authority of the government. They would not be tolerated for a moment in any State of the Union unless they were free in some mode of use to all the public. They no more dare to refuse to transport persons and property of the general public over the whole or any part of their road, than a ferryman would refuse to do the same thing over his ferry.

"They have received grants, corporate subscriptions, and municipal gifts, on the ground that they are for the public use, which could be valid on no other ground. Loan Association *v.* Topeka, 20 Wall. 661. And they are subject to such legislative regulations as are ferries, bridges, turnpikes, and other public means of conveyance and transportation, where they have secured no restriction on this legislative power either by contract or by constitutional provision." *

* 93 U. S. Supreme Court Reports, p. 457.

One of the most important cases upon this subject is that of Olcott *v.* The Supervisors, 16th Wallace, p. 678, decided in the Supreme Court of the United States in December, 1872. In this case Mr. Justice Strong, delivering the opinion of the court, says: "Highways have always been governmental affairs, and it has ever been recognized as one of the most important duties of the State to provide and care for them. Taxation for such uses has been immemorially imposed. It is said that railroads are not public highways *per se;* that they are declared such by the decisions of the courts; and that they have been declared public only with respect to the power of eminent domain. This is a mistake. In their very nature they are public highways. It needed no decisions of court to make them such." In the case of Railroad Company *v.* County of Otoe, 16th Wallace, p. 667, this language is used: "Highways owe their being either to some general enactment of a State legislature or to some law that authorized a municipal division of the State to construct and maintain them at their own expense. They are the creatures of law, whether they are common county or township roads, turnpikes, or canals or railroads."

But this whole question has been recently summed up in the opinion of Mr. Justice Harlan in the case of the Cherokee Nation against Kansas Railway Company, decided in the Supreme Court of the United States at the October term, 1889. In giving the unanimous opinion of the court, he says:

"The question is no longer an open one as to whether a railroad is a public highway, established primarily for the convenience of the people and to sub-

serve public ends, and therefore subject to governmental control and regulation. It is because it is a public highway, and subject to such control, that the corporation by which it is constructed, and by which it is to be maintained, may be permitted, under legislative sanction, to appropriate private property for the purpose of a right of way, upon making just compensation to the owner, in the mode prescribed by law." *

* 135 U. S. Supreme Court Reports, p. 657.

CHAPTER VIII.

RAILROAD CHARGES ARE TAXATION.

Railroad Charges Equivalent to Indirect Taxation.—They must be paid, Willingly or Unwillingly.—Imposed on Every Citizen by the Force of Social Organization.—Railroad Corporations through the Power of Eminent Domain on a Par with the Government.—Citations from Vattel, Justices Strong and Black, and Judge Shiras.—Railroads Agents of the United States and State Governments.—The Principal would Pay for the Roads by Taxation and the Means taken by the Agent are in Nature the Same.—Economic Error and Abuse of Authority to confer Sovereign Prerogatives on Private Corporations as a Source of Unlimited Profit.—Railways created to perform Governmental Duties, and Traffic Rates should be established by the Government.

THE use of railroads is a necessity, as has been shown in preceding chapters. They must be used whether one wishes it or not. If not used directly, every citizen must pay for articles transported over them, in the price of which are incorporated railway freights. They attach to every article of trade or use in all the pursuits of life. Like duties on imported goods, they are wrought into the price so as to be inseparable and indistinguishable. Sometimes freight charges are interlaced and superimposed one upon another inextricably, so that no man could separate them from the other elements of cost if he should purpose not to pay railroad charges. Such instances are where raw material, as cotton from the South or hides

from the West, are shipped to the East to be returned as manufactured goods. Let us now suppose that a man or community should be opposed on principle to paying freight charges. Any citizen or State has a perfect right to take such a position if railroad rates are simply the compensation to private individuals for services performed. No private individual has a right to compel another to pay him for services performed without his request or consent. It is a fundamental principle of law that no man can put another in his debt without the consent of the latter, or compel him to pay for services which he did not contract for. This is of the essence of personal liberty.

It is true the government levies taxes which every man must pay, however unwilling he may be. But this rests on two grounds: first, that it is for the general welfare that the institutions of government should be sustained; and second, on the implied contract arising from his being an integral part of the State. But in the development of society a power has grown up called the railway system, to which every citizen must contribute willingly or unwillingly in almost every transaction of life. As has been most truthfully and graphically said:

"When one buys food, clothing, or fuel, he buys railway transportation. When he builds houses, or stores, or manufacturing establishments, churches or schoolhouses, he buys railway transportation. When he buys horses and carriages, jewels or statuary, paintings or books, theater tickets or lecture tickets, or indulges in the luxury of doctors or lawyers, he pays for railway transportation."* Its demands are enforced

* "The Railway Problem," by A. B. Stickney, p. 31.

by a power more inexorable than governments. Taxes may be evaded, but railroad rates cannot be eluded. The Constitution of the United States prohibits all cruel and unusual punishment for crime. No man could be starved to death or his property confiscated for refusal to pay taxes. But starvation and ruin would be the lot of any individual or community rebelling against railway rates. A power so mighty that it reaches forth its hand and, touching every citizen of our Republic in all his business and social relations, compels him, by a force which he cannot by any possibility resist, to pay it tribute, is nothing less than one of the mightiest governmental forces, and its exactions are taxes. It is but a juggle of names to call the railroads private corporations and their charges compensation for services. The question is not whether railroad charges are reasonable or unreasonable. The point now is that they are omnipresent, unavoidable, inexorable charges imposed upon every living being in the nation by a power without himself, the amount of which charges he has no possible share or voice in determining. Thus in their very nature railroad rates are taxes.

But besides this irresistible power which the railway systems exert by virtue of the laws of trade and the natural monopoly they possess, the railroads have also special powers and privileges of a governmental and sovereign nature. Among these the greatest is the power of eminent domain,—that is, the right to take the private property of any citizen for railroad uses, with the ultimate right to invoke the whole military power of the nation to enforce this appropriation should he have the temerity to resist. It is true com-

pensation must be made, but this limitation is imposed on the sovereign government also. The railroad corporation and the sovereign are made equal in this respect and also in executive power. Through the power of eminent domain the whole force of the government is at the beck of every railroad corporation. It has been customary to rest the argument that the railroads exercise a governmental function mainly on their possession of this sovereign attribute. This is a prodigious power, and the argument based on it is most weighty; yet it is of minor importance compared with the resistless sweep of the argument from natural monopoly outlined above.

There is little adjudication directly upon the question of the nature of railroad charges; but by many jurists and in many decisions the principle is implied, if not affirmed, that charges by railroads are of the nature of indirect taxation.

In nearly every case cited in the preceding chapter it is implied or asserted not only that railroads are public highways, but also that it is the duty of the government to provide highways, either by its own action or by delegating its prerogatives and functions for this purpose to some properly authorized agent. Vattel says: "The utility of highways, canals, and bridges cannot be doubted. One of the principal things that ought to employ the attention of the government with reference to the welfare of the public in general and of trade in particular must relate to the highways, canals, etc., in which nothing ought to be neglected to render them safe and commodious.

"The whole nation ought to contribute to such useful undertakings.

"The construction and preservation of all these works being attended with great expense, the nation may very justly oblige all those to contribute to them who receive advantage from their use. This is the legitimate origin of the rights of toll."

In Bloodgood *v.* Mohawk & Hudson River Railroad Company, 18 Wendell, p. 46, the court says: "The government have not only the power, but that it is most emphatically their duty and interest, to construct railroads, where the public interest and convenience demand them, cannot admit of a doubt; for such purpose they are . . . justified in exacting toll from those who travel on them as a means to reimburse the State for the expense of their construction and reparation."

In Olcott *v.* The Supervisors, cited above, Justice Strong says: "Highways have always been governmental affairs, and it has ever been recognized as one of the most important duties of the State to provide and care for them. *Taxation for such uses has been immemorially imposed.*" And then the learned Justice adds: "Railroads in their very nature are public highways."

The case of Sharpless *v.* Mayor of Philadelphia, decided in the Supreme Court of Pennsylvania in 1853 and reported in 21st Pennsylvania State Reports, pp. 147 to 188, was said by Chief-Justice Black to be "beyond all comparison the most important cause that has ever been in this court since the formation of the government." It directly involved the validity of two acts of the legislature of the State of Pennsylvania authorizing the city of Philadelphia to subscribe for $2,000,000 of stock in aid of two railroads, and indirectly put in issue the legality of many other acts of the same leg-

islature under which prior municipal subscriptions amounting to $14,000,000 had been made. In deciding this most serious and weighty case Chief-Justice Black said:

"The people may be taxed for a public work, although it be under the direction of an individual or private corporation. The question then is, whether the building of a railroad is a public or a private affair. If it be public it makes no difference that the corporation which has it in charge is private.

"A railroad is a public highway for the public benefit, and the right of a corporation to exact a uniform, reasonable, stipulated toll from those who pass over it does not make its main use a private one. The public have an interest in such a road when it belongs to a corporation as clearly as they would have if it were free, or as if the tolls were payable to the State. . . .

"It is a grave error to suppose that the duty of a State stops with the establishment of those institutions which are necessary to the existence of government; such as those for the administration of justice, the preservation of the peace, and the protection of the country from foreign enemies. . . .

"Canals, bridges, roads, and other artificial means of passage and transportation from one part of the country to the other have been made by the sovereign power, and at the public expense, in every civilized State of ancient and modern times. . . .

"It being the duty of the State to make such public improvements, if she happen to be unable or unwilling to perform it herself to the full extent desired, she may accept the voluntary assistance of an individual, or a number of individuals associated together and incor-

porated into a company. The company may be private, but the work they are to do is a public duty; and along with the public duty there is delegated a sufficient share of the sovereign power to perform it. The right of eminent domain cannot be used for private purposes; and therefore if a railroad, canal, or turnpike, when made by a corporation, is a mere private enterprise, like the building of a tavern, store, mill, or blacksmith's shop, there never was a constitutional charter given to an improvement company, and every taking of land or materials under any of them was a flagrant trespass.

"If the making of a railroad is a public duty, which the State may either do entirely at the public expense, or cause to be done entirely by a private corporation, it follows that such a work may be made partly by the State, and partly by a corporation, and the people may be taxed for a share of it as rightfully as for the whole. The corporation may be aided by an exertion of the taxing power, as well as with the right of eminent domain."

One of the ablest and clearest expositions of these principles is contained in the opinion of Judge Shiras of the United States Circuit Court for the Northern District of Iowa, in the case of Peter A. Dey, *et al.* Board of Railway Commissioners for the State of Iowa, *v.* Chicago, Milwaukee & St. Paul R. R.

He says: "The establishment and maintenance of the public highways of the country is a governmental duty, and railways are only the modern or improved highways furnished for the transportation of passengers and property over the same.

"In the building, maintenance, and operation of the

railway system of the State there was and is of necessity exercised powers of sovereign or governmental nature, such as the right of eminent domain and of taxation, and whilst the formal proceeding for the exercise of these powers may have been had in the name of a particular corporation, nevertheless the power set in motion thereby was that of a sovereign State, and its nature was not changed by the mere form of the means employed to call it into action.

"The taking of private property in the location and construction of a railway in the first instance can only be sustained under the power of eminent domain, and the right to continue the operation of a railway over the property of the citizens calls for the continued exercise of the same sovereign power, which can only be justified upon the principle that the operation as well as the original construction of a line of railway is the exercise of a public duty primarily imposed upon the State as the representative of the people, and in the performance of which the State may subject private property to the burden necessary to be imposed in order to secure the building and operation of the highway."

Thus, from the principles of jurisprudence and the authority of many decisions of the highest court, it will be seen: first, that it is both the interest and the duty of the State to provide highways; second, that it is just and right that those who use highways should contribute to defray the expense of their construction and maintenance, which, as Vattel says, is the legitimate origin of the right of toll; third, that railroads are public highways and therefore the charges for their construction and maintenance are tolls. But if the

government directly constructs a railroad, the charges levied upon those who use the road to reimburse to the nation the expense of its construction and maintenance are taxes.

It is not material whether they are called tolls or fares or freight-rates in the first instance, any more than it is material whether the charges required to be paid for the importation of foreign goods are called imposts or duties. In all these cases the charges under any name are taxes. Any exaction under governmental authority, falling upon all citizens equally or upon all of a class, is a tax. But it has been held many times that the government may delegate its power and duty to construct a public highway, that is, a railroad, to an agent which may be an individual or a corporation.

In the Supreme Court of the United States in October, 1887, six important cases were brought by the State of California against the Central Pacific Railroad Company and its connections, on appeal from the Circuit Court of the United States for the Northern District of California. The principal question at issue related to the methods of taxation of the State of California as applied to these railroads, but the decision of these cases involved a determination of the right of Congress to authorize the companies to construct their roads. The court, in deciding that the United States had such authority, quotes from the opinion of the lower court the following language:

"To facilitate the construction of said road, the Government of the United States, by said act of Congress, *adopted the Southern Pacific Railroad Company as the instrument or agent of the United States* and con-

ferred upon said road" certain powers, privileges, and immunities. The same language essentially is used with respect to each of the roads made defendants in these cases. Thus, by this most solemn and weighty adjudication, in which the sovereign power of a great State was pitted against these corporations and was defeated, it was held that they were the agents and representatives, *pro tanto*, of the national authority, and that the franchises they held from the United States Government could not be taxed by the State. In the acts creating these corporations these roads are declared to be military and post roads, that is, governmental highways created by act of Congress through its sovereign power. Remembering now that if the National Government had constructed these roads directly it would have been necessary for that government to pay for them by some process of taxation, and remembering that these roads are merely the agents of the Federal Government, it is impossible to avoid the conclusion that the means taken by the United States Government to pay for these roads, both for their construction and maintenance, must be a form of taxation, although the rates of fare and freight are not established directly by act of Congress but indirectly through the agents of the government, to wit, the railroad companies. Their power to charge any fares or to receive any compensation whatever, as well as to build the railroads, is contained in the original act of Congress creating them, or they have no such authority at all. Railroad rates and fares are not a matter of private contract except in a very unimportant degree. A particular shipper may obtain a little lower rates than his competitors, but all are obliged to pay a reasonable

sum without making any contract, and the railroad must transport all proper freight without contract. If now the charges which the principal, that is, the government, would make to pay for the construction of any railroad are necessarily taxes, as has been shown, certainly the means for the same purpose taken by the agent are in nature precisely the same. The confusion which has existed on this subject arises from the same source as do most of the railroad problems, namely, the anomalous and economically false position of attempting to blend private capital with governmental functions and prerogatives. The sovereign power of taxation, which is one of the most solemn and weighty prerogatives of government, is thereby conferred upon private individuals, enabling them to use its tremendous force to exact from the public something entirely foreign to any right idea of taxation, namely, profit on private investments. This permits a comparatively few citizens out of the nation to use the powers of government, intended for the common benefit of all, to work out of the public a profit for their own advantage. As has been said, it is an economic blunder and a governmental solecism to confer governmental functions upon private individuals, giving them the power to use these functions as an aid in obtaining profit on private capital.

Reference has been made heretofore mainly to the National Government and authorities cited principally from the Federal Supreme Court. But the decisions of the Supreme Courts of the various States, in great number and almost without conflict, sustain these principles. Each of these sovereignties in its own jurisdiction has maintained these principles.

It would be an entire misapprehension of the purpose of the author, or of the scope of this discussion, to understand it as an attack upon any vested interests or as animated by hostility to any real rights of private capital. It is a serious economic mistake, and an abuse of governmental powers, to require responsibilities and duties which belong to the government to be performed by private individuals, and to place in the hands of a small portion of the people, called corporations, sovereign powers and functions which can be used and are used to exact from the whole public *profit* on private capital. But all the real rights of this capital must be protected and guarded until it is entirely eliminated from railroad operations. If, however, private capital is supplemented and reinforced by governmental authority and prerogatives, which are the property of the whole people, the capital is entitled only to the lowest rate of compensation at which it can be obtained through the credit of the government. To permit large profit, much more unlimited profit, in enterprises wherein governmental prerogatives are employed as an aid to private capital, is using the capital of the people, to wit, the franchises bestowed on the corporations, without compensation to the people, to augment the profits of private capital. This is a wrong to the public and an abuse of governmental authority.

Every true government is impartial to its subjects. Before the majesty of its throne all men stand on an equality. It knows no distinction of rank or condition. Poor and rich alike may appeal to it for justice and invoke its benign protection when wronged. As the symbol and representative on the earth of the Omnipo-

tent Ruler of the universe, it should so govern that all men could appeal to it with the same confidence with which the patriarch ages ago exclaimed, "Shall not the Judge of all the earth do right?" Any other government is caprice masquerading as law, or despotism clothed in the robes of slain liberty.

Since, then, the governments, State and Federal, of this nation have delegated the great duty of providing rapid transportation to aggregations of private citizens called corporations, and clothed them with sovereign powers and prerogatives commensurate with these duties, it becomes the duty of the government to see to it that these powers are used only in strict compliance with the purpose for which they were granted, and not perverted to purposes of gain or made the instruments of oppression and private aggrandizement. As we have seen, the public *must* use the means, that is, the railways, which government has created to perform a part of its own duties. It is therefore both the right and the most imperative duty of the government to see that only such charges shall be made as accord with justice and right and fulfill the purposes for which these governmental agencies were created. The impartial hand of government must interpose between the natural greed of gain intensified by monopoly on the one hand, and the public which must use this means of transportation although it is a monopoly and must use it precisely because it *is* a monopoly. This principle is declared by the high authority of the Supreme Court of the United States in the Granger cases, Munn *v.* Illinois, and other cases reported in 94th U. S. Reports, p. 113 *et seq.*

In the dissenting opinion of Mr. Justice Bradley in

the Sinking Fund cases, that eminent jurist, referring to these Granger cases, states the principle there determined very clearly and concisely. He says: "We held that when an employment or business becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen—in other words, when it becomes a practical monopoly to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community—it is subject to regulation by the legislative power." *

It will be seen that railroad corporations are the agents of the government to furnish means of transportation and to collect the taxes to pay for their construction and maintenance through the medium of passenger and freight rates. But without governmental restraint and limitation there is incorporated with this power to collect the taxes for these purposes the further power to make as large a profit as possible. This is the most vicious principle conceivable in taxation. Strange to say, Prof. R. T. Ely, usually so careful and correct in economic principles, seems to imply in one paragraph that this principle is admissible in modern taxation. He says: "Public functions are sometimes delegated to bodies of citizens. The collection of taxes is a public affair, but from time immemorial governments have sold certain sources of revenue to private parties, and allowed these to collect the taxes and derive whatever profit they could from the operation. Who has not heard of the farmers-general in pre-revolutionary France?" †

Certainly every student of history has heard of these

* Sinking Fund Cases, 99 U. S. Reports, p. 747.

† *Harper's Magazine*, September, 1886, p. 573.

French farmers-general, but who ever heard anything creditable of them in an economic sense? As collectors of revenue for the State they were failures, but as sources of constant irritation and hatred toward the government they were powerful. They enriched themselves at the expense of an impoverished State and a ruined peasantry. Rome in its zenith of power and splendor had this system for the collection of its provincial revenues. Rich provinces and nations were assigned to great senators or sold to wealthy companies for a specified payment to the public treasury. And these collectors of taxes for the State plundered cities and desolated whole provinces under the plea of collecting the revenue. Like some of our railway magnates, they amassed vast fortunes in a few years as their "profits" on the business of collecting a moderate revenue for the public.

The ideas of profit and taxation are totally incompatible. In any right theory of statesmanship or on any sound principles of political or social economy they cannot coexist in the same enterprise.

If government places in the hands of private citizens the power to levy a tax or tribute of any kind on the community, it is derelict in its duty and false to its trust if it does not couple with this power the strictest limitations and the most careful oversight to prevent abuse of this sovereign prerogative. The railroads, having been endowed with this sovereign attribute, must be subject to governmental control, and the traffic charges—that is, the rate of taxation for this public purpose—should be established or at least regulated by the same power which created these agencies, to wit, the will of the people expressed in law.

CHAPTER IX.

CONSOLIDATION IN ENGLAND AND AMERICA CONTRASTED.

Charles F. Adams's Services as Author, Railway Commissioner of Massachusetts, and President of Union Pacific Railroad.—Offers no Plan of Reform.—His Views on Voluntary Consolidation under Private Ownership.—Refers to Experience in England.—Social and Political Conditions Totally Different.—Powerful Hereditary Nobility in England a Counterbalance to Railway Magnates.—Powerful Families in the United States created by Railway Power and Favorable to its Increase.—Effects of Consolidation and Danger from it Vastly Enhanced in this Country from this Reason and from Influence of Railways through Elective System.—Opposition to Government Control from "*laissez-faire*" Economists.—Railroading, of Right a Governmental Function and not a Money-making Business.

One of the earliest and most effective writers upon railway subjects was Charles Francis Adams, of Massachusetts. His denunciations of the encroachments of railroad managers upon private rights and the safeguards of the public were vigorous and able. His services in arousing public attention and molding public opinion against these trespassers upon law, order, and even decency, were very great. Naturally enough, in a State like Massachusetts, where faithful service for the public good is usually honored by official recognition, he became the head of the Railway Commission of that State. Here his ability in controlling its operations was clearly marked, and the Commission, though

limited in its powers, became weighty and influential through the personal character and ability of its members, especially of Mr. Adams. On account of his official position and his studies in this line he was naturally led to publish a work on railway subjects, entitled "Railroads: Their Origin and Problems." This was one of the earliest works on this subject, and attracted much attention. At a later period, as is well known, Mr. Adams was placed at the head of one of the greatest railway systems of the country, the Union Pacific Railway and its connecting lines. While connected with that road he was active in devising reforms in the service, and especially advocated, with his customary earnestness and ability, a plan for the representation of the various classes of employees in a kind of general council which should consider with the managers of the road all complaints of the employees and aid in adjusting any well-founded grievances. It was believed by Mr. Adams that harmony between the employees and the managers would be promoted and greater faithfulness and loyalty to the road be fostered by this mutual coöperation. The plan has many features which seem promising, but I believe it has not been generally approved by railroad managers. As one of the results of the financial disturbances in Europe and America due to the failure of Baring Bros., Mr. Adams was somewhat prematurely removed from his position as president of the Union Pacific Railroad. Since his retirement from that office he has not, so far as I can learn, published anything on railway subjects. If, with his added experience as president of that great road and his practical realization of the mutability and uncertainty of railway management when subject to

stock-jobbing manipulation, Mr. Adams could give his present opinions on railway problems with entire frankness, they would constitute a most interesting and valuable contribution to the literature of the subject.

Mr. Adams, in the book above named, offers no solution of railway problems nor any definite plan to remove the evils of the present system. Indeed, contrary to his earlier views, he seems to think the problems will work themselves out, and that there are no serious evils. In earlier days he was unsparing in denunciation of outrages perpetrated by certain railroad managers which were then fresh in the public mind. Those were the palmy days of Fisk and Gould and the earlier exploits of the first Vanderbilt. Mr. Adams then earnestly and forcibly denounced these methods and prophesied danger to the republic from the overgrown power of railroad corporations. But in the work referred to above he takes a very different view and thinks that the railway system will gradually consolidate into a few great companies, under private ownership and control, and that these companies will live in harmony with each other and minister only for good to the public. He says that as the power of the railroad corporations increases, so will their sense of responsibility and sensitiveness to public opinion be increased. That the sense of responsibility will be increased may be conceded, but the experience of the last twenty years has not indicated that the great railroad magnates have become especially sensitive to public opinion. Indeed, one of the greatest of them has been commonly believed to have said, in reference to adverse opinion of the public, "The public be damned."

Another railway magnate, like Mr. Adams, president

of the Union Pacific Railroad, has said that "a citizen simply as a citizen commits an impertinence when he questions the right of any corporation to capitalize its property at any sum whatever."* This is new doctrine. It is a little more courteously put than the famous saying quoted above, which was rightly or wrongly imputed to Vanderbilt, but is the same principle and is equally wrong and pernicious.

All corporations are creatures of the people, intended to be their servants but often striving to be their masters. The people have an inherent right to know whether any corporation upon which they have conferred prerogatives of sovereignty, and which as trustee for the people is bound to perform governmental duties, is capitalized beyond its actual cost or not. The public are invited to purchase the bonds and stocks of these roads, that is, to pay for the roads, and the public through passenger and freight rates is taxed to pay the fixed charges and dividends. It is therefore the right of the people, and not an impertinence, to know what is the capitalization of any railroad corporation.

When it is remembered that the road of which Mr. Dillon was president owes the American people over $50,000,000, a sum larger than it would cost now to build the road, the views of Mr. Dillon do not seem to exhibit that sensitiveness to public opinion which Mr. Adams anticipated with such sanguine optimism. When in 1892 the "Reading Combine," having secured control of the great bulk of the anthracite coal production of the country, advanced the price of that staple article, indispensable alike for great manufacturing plants and for the comfort of myriad homes, a

* Sidney Dillon, *North American Review*, April, 1891, p. 443.

storm of indignant protests arose, manifested in the still small voice of private correspondence and thundered forth in the editorials of metropolitan journals. Never was public opinion more unanimous or more vigorously expressed against any action of a railroad corporation. This consolidation was certainly large enough to feel the responsibility of its position and action. Did it exhibit that sweet amenability to public opinion which Mr. Adams so confidently expected? Not in the most infinitesimal degree. It calmly announced one advance in price after another, until the public was fairly dazzled by the majestic indifference of this combination for plunder. Like the unjust judge, apparently it "feared not God nor regarded man."

Mr. Adams refers to experience in England, and states that consolidation of railroads has proceeded there until only a few powerful lines exist, which divide the country between them, and which, as he claims, have worked harmoniously and have not created the evils anticipated by English statesmen from such tremendous consolidations of private capital in the hands of a few corporations. Mr. Adams argues from this condition of things in England that the railroads in the United States should be left to their own control and permitted to consolidate under private management and ownership as they may choose, and that the beneficent results which he claims have been brought about in England will also come to pass in this country. It may be questioned whether the view taken by Mr. Adams correctly represents the present phase of English opinion respecting these consolidations. Certainly the number of cases brought before the English Commission does not indicate entire satisfaction on

the part of the public with railroad management. But if this view is correct it by no means follows that such would be the experience in America. In the first place, the English railway systems are far more distinct than the American systems. The latter are not only much vaster than the English systems, but they so intertwine one with another, each penetrating into the territory of the other, that no system, unless it be the Southern Pacific, could claim any considerable field of operations for its own. And even in the case of the Southern Pacific in later years, the Atchison, Topeka & Santa Fé road has cut into its territory on the south, and other roads have divided its northern field. The result of this condition of the railroads of the United States would be that under the present system of rivalry and competition furious rate wars could not possibly be prevented except by pooling. And this would be either oppressive to the communities which the roads serve, or the pool would speedily be broken up as heretofore by secret rate-cutting. Harmonious operation of the American railway systems is absolutely impossible for any considerable length of time except by some form of combination or consolidation. The only question is, What method shall be adopted? A method could be adopted which would be satisfactory undoubtedly to railroad interests, but it would be death to the public. But even if the objections due to the interlacing lines and the rivalry of these great roads could be removed, it does not follow that consolidation into a few great systems would be in this country what it is claimed to be in England. The social systems of the two countries are so radically different and are composed of such diverse elements

as to totally change the conditions. England has a great and wealthy aristocracy, wielding an immense power both from its large possessions and its prestige of many centuries of government, and also from the high character of the great body of its representatives. This great nobility is a vast conservative force standing in the way of encroachments upon the public by railroad magnates. The English nation, trained for generations in subservience to the leadership of these noble families, still follows their lead as against the new forces developed by the railway system.

The social condition of this country is directly the opposite. We not only have no titled nobility, honored for its wealth and lofty social position, which as well from its traditions as its interests is opposed to the railroad millionaires, but such semblance of nobility as we have is mainly itself the offspring of the railway system and devoted to its interests. Consequently a very large part of the social leadership of this country, instead of being a conservative force against the encroachments of the railway system as in England, here casts its strength in favor of that system. So that consolidations of railway power which might be harmless in England, because counterbalanced by the power of the nobility, would be terribly dangerous in this country, where the force of wealthy and powerful families is directly opposite and is cast into the scale of the railroad power.

But great as are the differences due to the different social systems of the two countries, even greater differences exist in the governmental organizations. The theory of English law is that Parliament is omnipotent. It is restrained neither by a written constitution, nor

by precedent of its own action, nor by the decisions of the courts. By this is not meant that great respect is not paid to both these sources of authority; but Parliament is supreme above all and can annul its own prior action or the decision of courts. Moreover, Parliament rules absolutely for the entire empire.

In this country the form of our political institutions is entirely different. With us, the people, or a lawfully acting majority of the people, are the supreme and absolute authority, qualified only by the Constitution of the United States and of the various States. The governmental organizations have only such powers as are bestowed upon them by written constitutions. Moreover, the Government of the United States is limited in its field of action. The functions and duties of government are divided between the Federal Government and the governments of the various States, each having its own limitations and restrictions. Consequently there is no one dominant authority concentrating into itself the whole power of the State. Besides, every part and division of our political organization is subject to control and change through popular elections. The judiciary itself is not an exception, since, if not directly elective, it is appointed by officers who are elected, and so reflects—happily with less distinctness than other parts of our government, but still it does reflect—partisan views and sentiments. The result of this is that in this country a power wielding such tremendous forces as the railway system, both by money and by votes, inevitably affects most vitally and powerfully every portion of our governmental organization. The railroads in the past have controlled legislatures at their pleasure, have corrupted the judiciary,

have placed their own favorites upon the bench in the highest courts of the nation, State and Federal, and have stricken down any officer, executive, judicial, or legislative, who dared to stand in opposition to their wishes. In one of the greatest States of the Union, the Supreme Court at one time had become so much influenced by railroad power as to be said to belong to the great railway system of that State. And its decisions on questions of railroad law have been received with discredit and disapprobation because of the evident and manifest favoritism toward railway corporations. Thus, on account of radical differences both in the social organization and in the political constitution and form of government, a world-wide difference exists in the effect which the same consolidation of railway power under private ownership would exert in this country and in England. That which might be there safe would be here exceedingly dangerous, and in the end practically subversive of our republican form of government.

Powerful opposition to governmental control in any form is made by the "let-alone" school of political economists, who say that government is best which governs least, and which meddles least with private business. It is contrary to American ideas and traditions, say they, for the government to regulate business, and so become that "monstrum horrendum" to this school of philosophers, a "paternal government." But to say that any government is "fatherly" to its subjects is certainly not the worst thing which can be said. And, on the other hand, it will be conceded that a governmental system which has enabled fortunes of $100,000,000 to $150,000,000 to be acquired by

single individuals in a lifetime, while thousands of industrious, frugal, and intelligent men with difficulty keep the wolf from the door, exhibits some qualities not wholly paternal.

The position of this school of thinkers is based on the following propositions:

1. The construction, maintenance, and operation of railroads, or, briefly, railroading, is a private occupation or business, and like all private business should be exempt from public control.

2. The capital employed in this business has a right to make all the profit possible from its operations, subject only to such laws as govern all other purely business enterprises.

But, recognizing that this business has some elements not covered by these propositions, they are forced to add a third, which may be thus stated:

3. Since the business of railroads is that of common carriers, and the experience of generations crystallized into the common law has shown that common carriers must be regulated by law, the railroads must be subject to these regulations.

But they forget that the common carriers known to former generations never owned their highways, whether by land or water, with two exceptions, and all persons had the same right to engage in the business and use the same highway, and all without charge for the use of the way. The two exceptions were where turnpikes or canals were constructed or exclusive rights of ferriage were given. But in these cases the State invariably fixed the rates of transportation, limiting them to what was supposed would afford fair compensation and not unrestricted profit. Thus the law of

common carriers to which they appeal destroys the first two positions of this school of economists.

Moreover, all railroads are clothed with the power of eminent domain, which is an attribute of sovereignty and is never possessed by purely private business enterprises.

In opposition to all this I affirm the following propositions:

1. The construction, maintenance, and operation of railroads is of right and on principle a governmental function or attribute, and not merely a money-making business.

2. The rates charged for transportation are in the nature of taxation, and, like all taxation, must be uniform and as low as possible.

3. The principles on which rates should be based, if no private capital were employed, are, first, cost of service, or, second, revenue for the State.

4. Since by the force of circumstances and an economic mistake private capital has mainly built the roads, the legal rights of this capital must be protected until it is wholly removed by governmental purchase of the roads or an adjustment made by a compromise, such as the writer suggests.

Heretofore it has been assumed that the people needed protection from the railroads, but from this point of view it will be seen that the roads need protection from themselves, and from the consequences of their false economic position. Presidents Blackstone and Ashley perceive the fact that help is needed, but wrongly reason that the cause of their trouble is the hostility of the people. Mr. Stickney perceives most of these principles more clearly and sets them

forth more vigorously than any other writer has yet done. But even he is led into some inconsistencies and want of clearness by this grotesque intermingling of the idea of private ownership with attributes of sovereignty. However, he is not alone in this confusion of ideas.

It has embarrassed the decisions of our highest courts and befogged the opinions of some of our ablest jurists. Affected from one point of view by the force of the political powers and attributes pertaining to railroading, and announcing principles in harmony therewith, they have soon been struck with the incompatibility of these principles with the idea of private ownership, and so, caught between Scylla and Charybdis, they have been sent into a whirling eddy of logical inconsistencies. It is not surprising that Mr. Stickney should fall into an occasional inconsistency of this kind when even the United States Supreme Court has been so beset by the conflicting ideas involved in the present system as to be unable generally to agree in the determination of railroad cases.

CHAPTER X.

STOCK-WATERING.

Able Work of Prof. A. T. Hadley on "Railroad Transportation."—Favors Pools and denounces Rate-Wars.—Criticises Speculative Management.—Book written Mainly from Standpoint of Investor.—Believes Abuses of Railway System will be corrected by Competition.—Case of "The Consolidated Road of Connecticut" to the Contrary.—Flagrant Instance of Stock-watering.—Views of Professor Hadley on Stock-watering.—Petition of Massachusetts Business Men against Watered Stock.—"American Railroads as an Investment."—Views of its Author on Scrip Dividends.—Issued to conceal Profits and trick the "Grangers."—Watered Stock a Burden on the Public for the Enrichment of a Few.

One of the ablest works on railway problems which has been published is the book entitled, "Railroad Transportation," by Prof. Arthur T. Hadley, of Yale University. Professor Hadley reviews the growth of the railroad system, acknowledging the wonderful progress made in a generation in railroad transportation, and justly giving credit to many of the leaders in this great movement. He briefly reviews railway management in the principal European countries, commending the splendid system of State service in Prussia, but criticising some defects and failures in the systems of other countries, deducing from the whole the general conclusion that State ownership, and, in effect, State control, is unadvisable in this country. Like most other authors on railroad problems, he offers no new

plan of reform nor any matured theory intended to remove the faults of the present system. He sees clearly all the defects and crudities of every effort towards public control of the railroads and every measure intended to give relief to the community as against the vicious organization of our present system of railways or against the evils due to mismanagement. It is rarely that he gives full justice to the good features of many of the acts which have been passed by various legislatures. He especially commends the success of the Commission of the State of Massachusetts, which has comparatively little authority, but has been influential through the ability of its members. He also commends the Commission of the State of Iowa, and it is creditable to his insight that he was able to do this when his book was written, since, at that time, the efforts of this Commission, as well as the character of the law itself, were as deeply befogged as possible by interested railroad advocates, who either failed to understand the true effect of the law or desired to cover up their own mismanagement by hiding the truth.

He is in favor of pools and thinks low through rates are one of the great advantages of our present railway system. It must not be supposed that he is blind to the faults and mismanagement of the present railway system, especially where these effect returns on the capital invested in the roads. He denounces rate-wars and excessive competition of all kinds, and all classes of discriminations which interfere with the success of the railroads in increasing their earnings. No writer of equal standing has more sharply scored the managers of the roads in all those courses of action which have been so common, which tend to depreciate the

price of stocks or endanger the security of bonds. Both in this work and in an article in the *Atlantic Monthly* for March, 1891, he shows the evils of the present management under private ownership, and the necessity of some control for the protection of legitimate investors in railroad securities as well as for the safety of the public. Some of his remarks on this point are of great force. In the article referred to, he says: "A large part of the control of our great properties is in the hands of men who are dealers in railroad securities rather than legitimate investors. It is one of the most serious charges which can be maintained against our financial system, that so much money is to be made in the former way and so little in the latter." In a still later address delivered in the southwest, his principal point seems to be that railroads must not be interfered with by the public, so that their bonds and stocks shall be kept good in the market. Indeed, his published works on this subject seem to have been written almost entirely from the standpoint of the investor rather than from any other. He has little to say about the relation of the railroads to the public or their duties as agents of the States and the nation, exercising public functions as trustees for the people.

The inference to be gathered from his writings is that he considers railroads to be private business enterprises, and as such they should be exempt from such vexatious restrictions as legislation, although it may be intended to require them to comply with the conditions and limitations upon which their charters were granted and upon which important governmental functions and powers were bestowed upon them. He condemns

laws carefully planned and intended to control outrageous discriminations and extortions, basing his opposition on the ground that legislation upon business affairs is unwise and impolitic. He has sharp words of condemnation for the managers who by stock-jobbing and manipulations of the money markets make enormous fortunes for themselves at the expense of legitimate investors, but he has only approbation for that different class of management which by skillful manipulation maintains the natural monopoly which its road holds against all competition, and by maintaining relatively high rates on a vast volume of business succeeds in paying enormous dividends on watered stock. The stocks and bonds of such roads are of course very profitable investments and stand well in the market. Professor Hadley argues that such abuses of the railway system will be corrected by competition. He says: "Where there is not a natural monopoly—that is, in the vast mass of cases—competition will generally do this part of the work. Where the profits of an existing concern are high enough to tempt it, a competitor will come into the field. There will be ultimately combination, and no reduction of prices; but there will be a reduction of profits, and a large one. The business which would support one concern richly will not do the same for two, no matter how much they combine, or what rates they try to make." *

But experience demonstrates that this position is not well taken. Professor Hadley had not far to look from his study-room to find proof that competition will not, in the most flagrant cases and where it is most needed, bring about correction of these abuses. The

* "Railroad Transportation," p. 103.

New York, New Haven & Hartford Railroad, "The Consolidated Road," as Connecticut people call it, was originally chartered with a limitation of dividends to 10%; all profits above that rate to be paid to the State. This road has grown enormously rich, and enriched all who were connected with it, by holding as absolute a monopoly of the traffic between New York and Boston as it is possible for any road to hold. By shrewd management it has controlled the Connecticut legislature for forty years at least, and no relief in the way of a competing line has been possible. Every effort made to gain such relief has been beaten in the Connecticut legislature, by means best known to the railway managers. To evade the provisions of the law requiring the payment of all profits above 10% to be made to the State, one issue after another of watered stock has been made, the issues being so devised as to give to its stockholders a heavy stock dividend with each issue. Meanwhile, this road, having substantially exclusive control of the traffic from southern New England to New York, maintains its rates at about the same figures charged ten years ago, although in the meantime many of the commodities which must seek an outlet through this great artery of business have largely decreased in price.

The details of these various issues of stock are worth consideration. Prior to 1889 the capital stock of this road was $15,500,000; in that year the capital stock was increased to $18,600,000, the increase being distributed to the old stockholders at par in the ratio of one share of the new stock to five of the old. As this stock was then selling at $279, the par value being $100, it will be seen that this was equivalent to a dividend

of 36%, this being in addition to the regular 10% per annum on the stock already held; in other words, each fortunate holder of this stock obtained a dividend of 46% for the year 1889 on each share of the stock. Two years later, an enormous amount of stock was distributed, this time the proportion being one share of the new stock at par to four of the old stock. The stock, with rights to subscribe for the new stock, was then selling at 270, thus making a stock dividend of 42½%; by adding the regular yearly dividend of 10%, the investor so fortunate as to own any of this stock received 52½% dividend on each share of his stock. In the present year, 1893, two of these stock-watering projects are in progress; the first is an ingenious device called Debenture Certificates. To carry out the extensions and consolidations referred to in a former chapter, the company proposes to issue $15,000,000 of these Debenture Certificates bearing interest at 4% and, after ten years, stockholders holding certificates are permitted to exchange them for stock of the company at par to the extent of 40% of the holdings of the stock. The stock is now worth at least $255 per share, as is shown most conclusively by the sale at auction of over 13,000 shares at that price. It is not probable that the stock will fall below this figure if the present monopoly is maintained. Assuming that the stock will be worth ten years from now the same figure as at present, it will be seen that these Debenture Certificates are a shrewd plan to give to stockholders a bonus of nearly 70% at the end of the ten years. They will thus receive, adding the 4% annual interest, 11% on these certificates. At the present writing an act has been hurried through the

Connecticut legislature permitting this corporation to make an enormous increase of its capital. It is true that extensive improvements have been made to the road-bed and large additions to its holdings of other lines. If all of these additions and improvements had been made, or should be made, by new capital obtained by selling the stock at its actual value without donations to the present stockholders, an issue of new stock for this purpose would be fair and legitimate; but so far as the capital is increased by donations to stockholders or to represent improvements made by earnings, that is, paid for by the public already, such issue of stock is piling an additional burden upon the shipping interests and the traveling public in direct violation of the compact under which the franchises of the road were originally granted. The road agreed to accept, as the maximum return on the investment, 10% per annum, and any profits above this, by the express words of their franchise, were to belong to the public; but, as we have seen above, the stockholders have within four years received, in extra dividends, nearly 100% above the 10% interest which they originally agreed should be their maximum profit. Everything in excess of this agreed dividend of 10% is money taken from the public for the enrichment of a comparatively few persons.

Professor Hadley apparently sees nothing to condemn in such stock-watering, and says: "The effort to prevent exorbitant profits by limiting the amount which the company may divide among its stockholders is of little use; it is generally evaded by stock-watering, that is, by distributing among the stockholders the new stock, which costs them little or nothing, and on which they can receive dividends. . . . To forbid a

corporation to increase its profits is to encourage waste and discourage enterprise. The principle of limiting the dividend, though fondly clung to by many of our legislators, cannot be considered a good one." *

Throughout his discussion of these problems, the principle is apparently assumed that railroads are private enterprises, and that any management of their business is legitimate which tends to make them more certainly and steadily income-paying properties. The right of the public to have transportation at as low a figure as possible, consistently with fair compensation for the actual capital invested and in return for the valuable franchises and great privileges conferred upon these corporations, does not seem to enter into his field of view. He says: "Of course there can be no doubt that it is desirable to limit the facility for constructing railroads with other people's money." And in a note he adds: "This is the most serious evil connected with the system of stock-watering. Stock-watering has three forms: first, where new stock is issued to represent money which, instead of being paid out as a dividend, is used in improving the property; second, where new stock is issued to represent an actual increase in the earning capacity and market value of the property, so that the par value shall represent as nearly as possible the real value; third, where stock is issued to give certain parties control of the road without actually risking anything like the amount of money represented by the par value of their shares.

"The second is on the whole the commonest form. It is resorted to for two reasons: either to equalize the share of the stockholders of different roads in a

* "Railroad Transportation," p. 102.

consolidation, or else to furnish an excuse for paying higher dividends than the law or public sentiment would otherwise allow. Any such evasion of the law is a bad thing in many ways. But the immediate effect is not as bad as is commonly supposed; for, as we shall see in a subsequent chapter, the attempt to keep rates down by limiting dividends defeats its own purposes; and the fact that such a limitation of dividends is evaded therefore makes very little difference to the shipper.

"The third form of stock-watering, for purely speculative purposes, is by far the worst—in fact, it is one of the worst evils of its kind under which the country suffers. And it is a great misfortune that it is not more clearly distinguished in the public mind from the first and second forms. The real evils of the third form are allowed to go on unchecked, because they are not treated separately from the much less real evils of the first and second forms. The unsuccessful attempt to prohibit them all prevents any successful attempt to prohibit the worst of them." *

This mild view of Professor Hadley is not shared by the shippers and business men generally. They see the necessary effect of stock-watering in raising or at least maintaining railroad rates in spite of the inevitable downward tendency in all prices. Quite in contrast with his ideas as given in the above quotation are the views expressed in a petition presented to the legislature of Massachusetts in March, 1893, requesting that railroad corporations be compelled to sell at public auction all new issues of stock when the market value of the stock exceeds its par value. This petition

* "Railroad Transportation," p. 54.

was signed by a great body of Massachusetts business men in all lines of business. In this able and powerfully supported address these men of large practical experience express their thought of stock-watering in the following terms:

"Stock-watering is always contrary to public policy, and in its direct form is positively forbidden by law. It consists in a corporation parting with its stock without receiving full value for it. The form in which this is done is immaterial. If the stock of a railroad requiring an additional $10,000,000 for new plant is worth and sells for $200 per share, precisely the same result follows, whether:

"First, the road issues and sells 50,000 shares at its value, $200 a share, producing the $10,000,000 needed, and then gives its stockholders a direct stock dividend of another 50,000 shares, which they sell in the market for another $10,000,000 and put this into their pockets; or

"Second, the road issues the whole 100,000 shares to its own stockholders at half its value (that is, $100 a share) and puts the $10,000,000 thus received into its treasury, while the stockholders sell this stock in the market at its value ($200 a share) and put the resulting $10,000,000 profit into their pockets.

"The first is distinctly forbidden by law, and subjects directors responsible for it to criminal penalties by fine, upon indictment; the second is the indirect way of accomplishing precisely the same result, and is only possible because of an anomaly in our laws. It was forbidden by law, until presumably interested parties caused the repeal of the law."

A voluminous work has just been issued entitled

"American Railroads as Investments." The author is Mr. S. F. Van Oss, and, as the title indicates, it treats all railroads and railway problems strictly from the standpoint of the investor. His purpose is only to consider the circumstances and conditions which affect the stocks and bonds of the various roads of the country as securities. The book is written with care and ability, and evinces extensive research into the condition of the various roads, their capitalization, the character and the business development of their various fields, and, in short, all that can bear upon the permanence in value and the income-paying capacity of the various systems. He is not concerned with any of the relations of the public to the railroads except as harmonious relations may increase net earnings or the opposite expose the companies to financial loss. It is interesting, therefore, to consider the views of an author confessedly writing from the single standpoint of an investor. On the question of stock-watering his ideas are valuable and suggestive. We quote a part only of his remarks on this subject:

"In the main there were six different ways of inflating the capital of American railways:

"1. By fraudulent issues of bonds and shares as a downright swindle or for speculative purposes.

"2. By paying too much for construction.

"3. By purchasing properties at excessive prices.

"4. By buying superfluous competing lines.

"5. By selling bonds and shares at a discount.

"6. By declaring stock dividends.

"Fraudulent issues of course were the worst form of 'watering.' The issue of 'securities' of chimerical companies, sold in Europe for whatever they would

fetch, has little to do with our purpose, since it was an ordinary fraud which might have been perpetrated as well with canal, steamship, or any other securities. The fictitious issue of stock for the purpose of manipulating the market, however, was of more direct importance to shareholders. The Erie Railroad has been cursed with it more than any other railway. 'Jim' Fisk and Jay Gould increased the share capital of that company between 1868 and 1872 from $17,000,000 to $78,000,000, mainly to manipulate Wall Street. . . .

"In the same manner, though not in the same proportion, the thing was worked all over the Union, especially in connection with the Pacific roads, a group of railways which has seen more frauds than any other. The builders of the Central Pacific, for instance, commenced with the modest sum of $159,000, and taking this as a nucleus they completed the road, gathering a total capitalization of $139,000,000, and acquiring large fortunes over the transaction; the Government Commission on Pacific Railroads in its report to Congress says that $58,000,000 would have been a very good price for the railway." *

In a later passage he is exceedingly frank. He says:

"In a previous chapter we have seen that with regard to rates the interests of the people conflict with those of the corporations; but if we consider the above grounds, we must necessarily come to the conclusion that they are antagonistic chiefly because of the unreasonable attitude of the nation.

"This unreasonable attitude has compelled the railways to ward off its effects; and for that reason stock

* Van Oss, "American Railroads as Investments," p. 125.

dividends were resorted to as a dodge. By inflating capital they would conceal profits and thwart the designs of rate-reducing railroad commissioners. On the whole, they have fulfilled their mission, and, as we hope to show below, scrip dividends benefit the investor because, by concealing profits, they cause his investments to yield higher returns than would be permitted by Grangers if uninflated stock were to earn high dividends, although substantially the same returns as now. In this manner the investor of to-day receives redress for the wrongs done to his predecessor. It is the result of a trick, and the public sees its secret; but that does not appear to curtail its success—a success altogether in accord with fairness and justice." *

This naïve passage explains exactly the true motive and reason for scrip dividends or stock-watering. There is no attempt to argue that they do the public no harm, but there is a frank statement of the truth that stock dividends are made for the purpose of concealing profits and giving to the investor an increased return on his capital, and this is done for the express purpose of tricking certain unsophisticated persons called "Grangers." Inasmuch as the entire public, except holders of railroad stocks and bonds, are the parties from whom these increased profits must come and by whom they must be paid, it will be seen that by Grangers are meant the entire public who must use railroads. Whether this open admission of the purpose of stock-watering will be satisfactory and pleasing to railroad managers may be questioned, but neither the practice nor the reasons for it will be satisfactory to the public.

* Van Oss, "American Railroads as Investments," p. 131.

CHAPTER XI.

CAUSES AND REMEDIES FOR RAILROAD DISORDERS.

Capital in Railroads protected by Monopoly.—Unrestricted Competition the Rule in Business.—Hence Conflict between Shippers and Railroads and Resultant Evils Constituting Railroad Problem.—Remedies proposed.—Under "let-alone" Policy Present Evils would be intensified.—C. P. Huntington's Plan would have Same Issue.—Governmental Ownership.—Supported by Three Classes, Socialistic Reformers, Labor Representatives, and Railroad Officials.—Views of Rabbi Schindler and T. V. Powderly.—Grave Danger of Present Situation.—Action of Judges Taft and Ricks.—Policy must apply Equally to Both Sides.—Views of President T. B. Blackstone.—Management of Chicago & Alton Railway.—Blackstone's Plan for National Ownership.

We have shown in preceding chapters that the root of all railway maladies and all the controversies between the public and the railways lies in the necessary and irreconcilable conflict between the demands of private capital invested in antagonistic systems of transportation, each of which exerts every means to divert business to its own line and increase its net earnings, and, on the other hand, the interests of the shipping public, which demand constantly cheapening rates of transportation. This demand is unceasing and inevitable, and all investors in railway securities must recognize and conform to it. It arises from the necessities of business, in which unrestricted competition is still the rule. Every farmer is competing, intentionally or

unintentionally, with every other farmer in the world. And in the vast majority of cases every merchant, manufacturer, or lumber dealer, or business man of any vocation whatever, is engaged in the fierce strife of competition. Methods of cheapening production and lessening expenses in every line of business are eagerly sought and adopted whenever found practicable. The prices of most products, whether of the loom, the forge, the farm, or the mill, have been greatly reduced in the last two decades. Except in the cases where great trusts have been organized, prices have been steadily lowered. This law of competition applies almost without restriction to all classes of raw material and every kind of manufactured goods. The law of free competition is almost universal in business of every kind except that of transportation. But here the conditions are not equal. On the one side is free competition; on the other, in the case of the railroads, is always a partial and sometimes a complete monopoly. Railroad managers object to the construction of parallel lines of road, and try by all means to keep up pooling. Since the Interstate Commerce Law has made this illegal, they try to devise some substitute which shall be equivalent in its effects. Some prominent railroad officers, notably Presidents Ashley and Blackstone, complain bitterly of the public for giving franchises to other roads, reducing the business which might otherwise pass over their lines. In the majority of cases, business men in ordinary avocations must submit to competition and must meet its demands. They must cheapen their goods to meet the prices of their competitors. If railroads are merely private enterprises carried on solely for the profit there is in them, they

must do the same. And on this supposition it is the right and the duty of the public to grant a franchise to every substantial corporation which may desire to build a railroad. The field should be free and open to all competitors. On the other hand, if railroads are partial or entire monopolies, they must be controlled by the government, or must voluntarily make the lowest rates on all traffic, or this present condition of incessant discord and turmoil and injustice must continue as long as private ownership in railroads is maintained under the present system.

The problem before the American people, then, including railway managers and railway investors with the rest of the public, is how to eliminate the conflicting interests due to the demands of private capital.

To accomplish this purpose, several methods are suggested. The first is what I may call the "let-alone" policy, advocated by Mr. Adams and Professor Hadley, and by railroad advocates generally, Chairman A. B. Stickney and President Blackstone being notable exceptions. According to this plan, competition and consolidation must be allowed to take their course until absorption by private ownership and the railroad wrecking due to stock manipulation and the disasters of rate wars shall have reduced the railroad systems to a few great corporations.

Under this plan the evils of the present system would go on with increasing intensity as the struggle between the business interests and the railroads grew stronger, as it must necessarily do, on account of the unrestrained competition of business beating against the complete or partial monopoly of the railroads. It would involve

the repetition, on a larger scale, of the same unrighteous stock manipulation by rival railroad magnates seeking to gain control of coveted systems of transportations. The depreciation in value of railroad properties in this country at the time of the Baring Bros. failure was estimated at $300,000,000. The depreciation in the securities of the Reading Railroad recently, within one week, was estimated at $34,000,000. These were both largely due to the manipulation of rival railroad managers. And they are but minor specimens of disasters which would follow the carrying out of this "let-alone" policy to its ultimate end of consolidation into a few, or possibly into one, great railroad corporation under private ownership and control.

It is discouraging to find so able and so recent a writer as Mr. Cook after a thorough discussion of the whole subject coming to the conclusion that this "let-alone" policy is the best that can be hoped for. He believes that railroad commissions rather tend to increase than decrease the corruption of the government by the railroads, and the tendency of these and other corporations to control the republic. He does not think the Interstate Commerce Commission is capable of solving any of the difficulties of the railroad problem. In his opinion, railroad wars will always exist, and all the evils of discrimination, rate-cutting, and other demoralizing practices of the present railroad system, until only a few great trunk lines remain to compete for business. But he is more frank, or has a clearer vision of the results of this course, than others who have favored it. He realizes the unspeakable disasters, both to the business public and the investors in railroads, which must occur before this policy has

worked out its final consummation; and he clearly points out the great peril to the nation which will result from such a concentration of power. He says:

"Consolidation absolute and complete is the only solution. It may be that in order to bring about such consolidation there must be railroad wars, loss of dividends, cutting of rates, and a demoralization of business. It may be that the weaker roads must be crushed until they are absorbed by the greater. All this will involve frightful loss and hardship. Possibly it may be avoided by gradual purchase, absorption, and consolidations. But certain it is that the feeble hand of the proposed railroad associations merely delays the fierce process of consolidation by means of railroad wars and foreclosures. The necessity of that process cannot be obviated by such makeshifts and hollow truces. . . .

"Consolidation is the only available solution of the railroad problem. State ownership is hostile to Anglo-Saxon instincts and settled ideas of government. State socialism, such as Germany is fast drifting into, is out of the question in America. Federal or State regulation of rates and abuses does not cure the evils or remove the danger that the railroads will dominate the State. Coöperation or profit-sharing is impracticable. The present tendencies are toward a further regulation of railroads on the part of the Federal Government, and more rapid consolidation on the part of the railroads themselves. When these two tendencies shall have reached their natural conclusion, and when a concentrated railroad power is subject to regulation by the Federal Government, then the question will arise, Which is the greater, the railroads or the State? The

question then will be, Shall the State rule the railroads, or will the railroads rule the State ? " *

Mr. Cook shows the prevision of a true prophet in this graphic sketch of the effects of this policy. But to the writer it does not seem that such great losses to the State and such calamities to private investors as must attend this wrecking process are either necessary or unavoidable. It is certainly not the part of wisdom nor of statesmanship, much less of a sagacious political economy, to suffer such disasters to befall us as a nation when by a manly and courageous grasp of the problem all these troubles may be averted.

A second plan to remove the present troubles and difficulties of the railroad system is that of voluntary amalgamation and consolidation into one company under private ownership and control. This plan has been advanced by one of the most prominent railroad managers of the country, Mr. C. P. Huntington. In an able article published in the *North American Review* for September, 1891, he urges the consolidation of all the railroad companies of the United States by voluntary action into one—or, at most, two or three—great corporations as the only complete remedy for rate-cutting and rate wars, and the many evils which follow in their train. In a later chapter this plan of Mr. Huntington's will be considered somewhat in detail. It is sufficient here simply to call attention to the fact that the president of one of the greatest systems in the United States, whose experience in railway construction and management is very large, after many years of observation gives it as his deliberate opinion that consolidation into a single great corporation—or, at

* W. W. Cook, " The Corporation Problem," p. 176.

most, into not more than two or three great systems—is the best method of reforming the present railway system.

A third plan to bring about the much-needed reform is that of government ownership and control.

The singular thing about this plan is that it is supported by three distinct classes of advocates, each of which classes, from different standpoints and by widely divergent lines of thought, arrives at the same conclusion, namely, that government ownership and control is the only real remedy for the disorders and the injustice of the present railway system. Socialistic writers generally favor the plan of government ownership, because it is in accordance with their theories of political economy and state-craft. Some of these writers advocate this plan with great clearness and force. A single illustration will suffice for my present purpose:

"The inventive genius of the nineteenth century has made such rapid strides that the governmental machine has not kept step with them.

"But if the constitution of our country has not made provision for such a development, is that sufficient reason that we must remain at a standstill, and that an addition to the functions of the government should be considered unconstitutional? Does the constitution create a nation or does the nation create a constitution? . . .

"Whether people consider it constitutional or not, the time has come when such an important factor for human welfare should be taken out of the hands of selfish individuals and greedy corporations, and when it should become a function of the government to take care of railways as surely as it is the function of the

government to keep an army and navy to protect citizens against the attacks of an enemy. . . .

"I have endeavored to place only one side of this question in its proper light, viz., that new times require new forms of government, and that the functions of the government must constantly be changed so as to adapt themselves to the needs of the people, which in their turn are brought about by changing conditions.

"If this one side of the question be properly understood, all arguments and objections against the nationalization of railroads must fall to the ground. This one side of the question once understood, methods and means to arrange and accomplish the nationalization of railroads will be forthcoming. I have little doubt that in due time it will become the function of the government to provide transportation, because all history proves that whenever a new need sprang up, the people—who, after all, are the government and are the framers of constitutions—have changed the functions of their officials, and have always added such new duties to them as were in conformity with the times." *

The second class of advocates of this plan are ably represented by Mr. T. V. Powderly, the well-known head of the Knights of Labor, who warmly and vigorously urges government ownership, and brings the strength of his great influence with the labor organizations to urge forward this reform in the interests of labor. From the standpoint of the laboring-man, he sees and feels most keenly the injustice to which, in many cases, railroad employees are subjected from the arbitrary and overbearing character of some of the railroad managers, and the further hardships to which

* Rabbi Solomon Schindler, in the *Arena* for January, 1893.

they are subjected as the result of the evils due to excessive competition between the railway systems, in some cases, and in others from the pressure of the shipping interests to reduce rates, as opposed to the demand of private capital for as large returns as possible. Between these upper and nether millstones of competition the workingman is in danger of being ground to powder. As an individual, he is powerless against the immense corporations by which he is employed. He is subject to the vicissitudes of their business, whether due to general business depression, or to ruinous rate wars, or to mismanagement. If, as an individual, he dares to complain, many times his complaint, however well founded, costs him, directly or indirectly, his place. Often he must either submit to oppression and injustice, or risk his means of livelihood and the support of his family. If an organization is effected, and as an associated body an effort is made to redress real or fancied wrongs, still an unequal struggle must be maintained with the immense forces of organized capital. Terrible evils to society are the result of the conflict, as in the fearful riots at Pittsburg, in which many lives were lost and tens of millions of dollars worth of property was destroyed; or as in the great strike on the Chicago, Burlington & Quincy Road, in which, with less destruction of property, great loss was inflicted both upon the railroad and the workmen. Whether, in fact, the wrongs of the workmen were real or otherwise is not now material. The employees felt them to be serious and substantial injuries, and endured great hardships for themselves and their families in the effort to redress them. If they appealed to the courts for relief, little practical help could be given,

and they felt that justice by course of law was denied them.

Mr. Powderly, looking at the problem from the standpoint of the workingman, and seeing most clearly and feeling most deeply the real and actual injustice to which their position subjects them, has written many times in warmth and bitterness in denunciation of the railway system as now organized. In an article in the *North American Review* for November, 1892, he says:

"Behind the railways and telegraphs stands the judiciary, ready and willing to lend its awful strength to that now exercised by corporate wealth, so that the combination may strike terror to the hearts of the men who must work for bread. Vest the title to the rail and telegraph lines in the government, and we destroy the incentive to own judges and courts. Every well-regulated railroad corporation now owns its judges and courts; one of the necessary adjuncts to the great corporation of the day is a court of its own, or a number of them. It is cheaper to buy judges to set aside laws than it is to pay a number of legislators to make laws; besides, it is safer, and attracts less attention."

These are sad words to come from the pen of the leading representative in this country of the labor element, and one who has in many instances proved a wise and conservative adviser to the thousands who look to him for counsel. And the pity of it is that it has too much justification in the past.

Within the present month, March, 1893, a strike has occurred on the Toledo, Ann Arbor & North Michigan Railroad, in the course of which Judge Taft, of the United States Circuit Court, and Judge Ricks, of the United States District Court, have issued some remark-

able orders, which, if sustained, will inaugurate an entire change in the relations which organized bodies of laboring-men in the employ of railroads will hold to the railroads themselves. These orders are revolutionary in their character, and must hasten forward the day of entire public control, and perhaps of public ownership, of the roads. But if this course of action is directed solely against the labor associations, it will only intensify and deepen the feeling expressed in the above citation. It will be a grave and most threatening situation if the railroad employees, or the labor organizations generally, shall come to feel that the law and the courts have for them no help and no justice. Whether this feeling is just or unjust is not material. Its effects in either case will be fearful, both in the loss of life and the destruction of property. Railway managers seem to be blind to the forces which are seething and boiling beneath the surface of our social organization, inspired by the feeling that law and the organization of society, as it now exists, are only for the corporations and the rich. That hair-brained agitators are responsible for much of this feeling, and that much of it comes from the pressure of social conditions which cannot be avoided under our present social organization, may be freely conceded. But, on the other hand, no thoughtful and careful student of contemporaneous history can fail to recognize and admit that there is real and serious ground for much of the complaint which exists.

It is absolutely certain that unless some plan can be adopted by which this smoldering feeling of dissatisfaction, and almost hatred, can be allayed, and in its place a feeling of harmony and encouragement fill the

minds of the working-people, we shall within a decade witness labor convulsions compared with which anything in the past will be of minor importance. It is the most imperative duty of every well-wisher to his country to aid by all possible means in bringing about these new relations of harmony and peace. No political question now before the people of the United States can compare with this in importance. The tariff and the silver question are boys' play as compared with the social questions involved in the relations between capital and labor in general, of which the most important branch is that between the railways and their employees. He who can originate a plan which shall bring about this reform and readjustment of social relations upon a basis of right and justice, will perform a work for our nation equal to that which any statesman of former days has been able to accomplish. The question with which we are now concerned is not the freedom of four millions of black people, but the social freedom and relief from inequitable social conditions of many more millions of white Americans. It must not be understood that the writer believes it to be right for engineers, or brakemen, or other employees of a railroad, to leave their employment at a moment's notice, without regard to the position of their trains, or the danger to the traveling public resulting from such action, or the convenience of the business public, which is thrown into confusion by the abrupt cessation of ordinary means of communication and transport. It has been assumed through all this discussion that the railroad is a servant of the public, and the working force of every road is a part of this agency. If the railroad is a public servant, then the public has a right

to control it, and this right of control is just as strong against the corporation which owns and runs the road as it is against the engineers who pull the throttle or the men who set the brakes. The law should know no distinction between millionaires who own the railroad, and the laboring-men who, by hard and dangerous service, earn a bare livelihood, unless such a distinction should be to protect the weaker man as against the powerful individual or corporation. It is significant that some leading railroad men have protested against the action of Judges Taft and Ricks, evidently perceiving the logical result, namely, that the government must interfere between the corporation and its employees to subserve the purposes of justice and fair dealing on their part, or the government must take entire control of the railroads. It is certain that no such interference as against the laboring-men alone will be tolerated. The government must keep its hands off entirely, or it must see that they are impartially laid with equal power on both sides in this controversy.

The third class of advocates of government ownership of the railway system consists of those railroad managers who, from peculiar circumstances, or from a deeper insight into the problem, see more clearly the real sources of the railroad difficulties, and apprehend with a stronger grasp of thought that the remedies, to be effectual, must be thorough and sweeping. The most notable representative of this class is Mr. T. B. Blackstone, the distinguished president of the Chicago & Alton Railroad. He created a profound sensation in railroad circles, as well as among social economists, when, in his report to the stockholders of his road in 1890, he came out in open and powerful advocacy of

government ownership. He presented a carefully formulated plan to this end, urging it upon the ground of necessity for the protection of the railroads themselves.* The Chicago & Alton Railroad occupies a unique position among railroads. It was one of the earliest roads built in Illinois, and was planned and constructed before the idea had come to prevail that great genius in railroad financiering was shown by loading a road with an amount of capitalization two or three times its actual cost or worth. It has no watered stock, and a very modest amount of capital and bonded debt. In these respects it is quite in contrast with the New York, New Haven & Hartford Road referred to in the preceding chapter. It is carefully and economically managed, and its road-bed and equipment are kept in excellent condition. As a result of all these things it is able to hold its own against all competition, and has once or twice come out victorious in a contest with its rivals who attempted a boycott. Without any such monopoly of position as that of the New York & New Haven Road, it is still able to pay eight-per-cent. dividends regularly on its stock, meet the interest on its bonded indebtedness, and maintain its physical condition at the highest point. It is able to do this only because of its low capitalization and conservative management. Its average rate for passengers for the year 1891 was 1.96 cents per mile. This was only about one fourth of a cent per mile higher than the New York Road, while the latter carried more than three times as many passengers. On the other hand, its freight rate was only ninety-one one hundredths of one

* The plan of Mr. Blackstone for national ownership of the railroads is given in full at the end of this chapter.

cent per ton mile, while that of the New York & New Haven Road was nearly double, being one and seventy-nine one-hundredths cents. The Alton Road moved five hundred and forty-seven millions of tons one mile, while the New York Road moved two hundred and fifty-five millions of tons one mile.

If all the railroads of the United States had been as carefully managed, and their capitalization kept as low as this road, there would have been very little public irritation and dissatisfaction with the railway system. And it is precisely because the public cannot make the proper discrimination between the management of different roads, that President Blackstone feels so keenly the injustice of the public toward the railway system.

The report of President Blackstone referred to above was printed in pamphlet form, entitled "The Danger and Wrong of Existing Legislation Concerning Railways: A Review of its Results. Government Ownership of Railways Advocated Instead of the Present Public Policy."

This pamphlet sets out clearly and ably the railroad view of these questions, and I therefore quote quite extensively from its pages. The title and sub-title give in a few words a synopsis of the argument of President Blackstone. He says :

"The principal agencies employed by the States for the last twenty years are railroad commissioners, who are required from time to time to fix reduced maximum rates, and speculating contractors, who have been, and are now, authorized to construct railroads where they are not needed, and where such roads cannot possibly obtain traffic enough to support them. The object of

the government appears to be to divide traffic between the older lines and those more recently constructed, and by the resulting excessive competition to reduce rates for transportation. The building of such railroads has caused the loss of many millions of dollars of capital invested by the shareholders of the older railroads, which were built when and where they were needed by the people, and not for speculative purposes.

"The remarkable course which the government has pursued in causing competing railroads to be constructed, and by imposing what appears to us to be, in some cases, unnecessary restrictions upon railway managers, cannot be too often referred to while it remains unchanged. We believe the people have pursued a mistaken policy, and that, without much consideration as to the ultimate effect of their course, they have been led on, step by step, until great injustice has been done, and is now being done, in their name. . . .

"It has been suggested that the object of the State governments in causing competing railroads to be constructed has been to secure reasonable rates for transportation. But a moment's consideration must convince any person that the building of new railroads cannot be accounted for on that theory. No railroad company has ever claimed the right to charge unreasonable rates. . . . For about two years the General Government has coöperated with the State governments by the employment of commissioners under the Act to Regulate Commerce.

"One of the principal features of that act is a prohibition of all agreements between railroad companies under which such companies may peaceably share the benefit of competitive traffic. That Congress did not

intend, when passing the Act to Regulate Commerce, to afford protection to railroad companies against excessive competition, or to give them the right to insist that all charges should be reasonable, and thereby afford to them, as well as the people, the equal protection of the laws, is evident from a careful reading of the act. . . .

"We are told that 'competition is the life of trade,' and that competition between railroads is one of the objects of the government in multiplying them. That voluntary or free competition, as it is exercised by all classes except railroad corporations, promotes the true interest of the public, no one will deny. Such competition, in its final analysis, leads to the 'survival of the fittest,' and the public are therefore served mainly by those best qualified, and at competitive prices. Those who prove unfit to cope with others are driven from the field, or if, being fit to compete, the number of competitors is found too great for profitable competition, they may go elsewhere or pursue a different occupation. If they become paupers, they are supported while they live at the expense of the public.

"Like conditions do not exist in railroad competition. The railroad company cannot be permitted to compete without restrictions, as others are permitted to do. It cannot be permitted to limit its charges by the law of supply and demand only, as all others may do. It cannot be permitted to recoup losses incurred in a dull time when afterward there is an active demand for what it has to sell, as the merchant and others may do.

"Under favorable conditions, competition between railroads tends to promote the public interest, and

should be encouraged; but forced competition leads to evils without number, which has been abundantly demonstrated in this country. When the competing railway is losing money, it cannot be removed to another field, nor can it be put to other use.

"When it is not operated at a profit, it cannot be expected that it will be kept in proper condition for service, and it soon becomes a pauper; but, unlike other paupers, it forces its competitors to support it, and it never dies. . . .

"Shameful as the record of the treatment of railroad shareholders by the government has been, and still is, probably nothing less potent than a special interposition of Providence can so change public sentiment as to induce the government to do anything which could be construed as an admission that it has been in the least degree wrong or unjust in its treatment of railroad corporations during the last twenty years. The suggestion we have made appears to avoid the necessity for its making such an admission if the course we have indicated should be adopted.

"It is evident that the disposition of the people to continue the reduction of rates for transportation from time to time 'grows by what it feeds upon.'

"It would therefore appear that shareholders of a great majority of the railroads have but one alternative: they must either sell their remaining interest in railroads to the government at such price as it may in its sovereign pleasure be willing to pay, or submit to the continuing process of confiscation, and soon lose the remainder of the capital they have invested therein. . . .

"It is said we should not complain unless prepared

to suggest a remedy. We will therefore suggest the ownership of railroads by the National Government, and the organization of a corps of railroad operators who shall remain in the service during good behavior, and be in no greater degree under the influence of politicians or political parties than the army militant."

He then gives a very carefully prepared plan for the organization of such a company. This plan is printed in full as an appendix to this chapter. But, in brief, it is that the National Government shall acquire the ownership of all the railroads now used for interstate traffic, for which payment is to be made in government bonds bearing not more than three per cent. interest per annum. Separate schedules of rates are to be prepared for the railroads for each State. Railroads hereafter constructed to be purchased by the National Government, or not, at its option, but to be under its control. A board of national directors, to be appointed by the President of the United States, to hold office during good behavior. All schedules of rates, whether for local or interstate traffic, to be prepared or supervised by the national board of directors.

It seems important to Mr. Blackstone that the rates for each State shall be distinct and presumably different from those of every other State, in order that the people of any State shall pay only the cost of the railroads located within the limits of their State. This seems to us not only entirely impracticable, but also unwise and unjust, unless the rates are limited absolutely to strictly local traffic. If it is intended to include through traffic, it would be obviously unjust. The greater part of the business pouring into Chicago or New York, for instance, originates hundreds of

miles beyond the limits of either of the States of Illinois or New York. Consequently, if this principle should be applied to all traffic, these States would be at a great advantage over other States which furnish the bulk of the business over the lines. In like manner, the State of Connecticut would have an immense advantage, since the vast traffic between New York City and southern and eastern New England must pass over its territory. Besides, as shown in a preceding chapter, the good or ill fortune of any part of the railway system affects, more or less directly, the entire system, just as the prosperity or adversity of one State or section of our country affects, more or less, the entire nation. As our whole country prospers by union and harmonious coöperation, so the whole railway system should be treated as a unit, and every part should coöperate in friendly and helpful relations with all other parts. There should be no State lines or narrow jealousies or sectional boundaries. We are one people, and we can have no more helpful servant than a united and harmonious railway system.

It is surprising to find President Blackstone advocating the appointment of all the directors of the proposed national company by the President of the United States, these directors to hold their office during good behavior. This would throw into national politics the most stupendous prize for party strife and the most amazing reward for party success that has ever been dreamed of in the history of our nation. It would put in the hands of the man who should be elected President a power for personal and party aggrandizement far surpassing anything that Cæsar or Napoleon ever wielded. This would be a power wholly inconsistent

with Republican principles and most dangerous to the liberties of the people. But the remaining portion of the fifth section in which this suggestion is made has some most excellent provisions respecting the terms of service of the subordinate officers and employees. These, after a probation of one year, if found satisfactory, are to be kept in the service during good behavior, as far as practicable. This is a most excellent suggestion, and would go far to remove the causes of irritation and dissatisfaction which so frequently culminate in strikes and other railroad disorders.

It will be seen, by reference to the second section, that, in common with most advocates of railway ownership, Mr. Blackstone proposes that the government should issue bonds and purchase all the railways in the nation. What he has to say with respect to the economies of such a purchase is very true and very forcible. He says:

"The difference between the amount of annual interest and sinking fund on the government bonds to be issued in payment for the railroads, and the amount the railroad companies now pay annually on account of interest, sinking funds, and occasional dividends, would at least enable the government to continue present rates for transportation, and would probably enable it to immediately reduce them. Rates still lower could be made from year to year as the amount of bonds outstanding is reduced by the sinking fund, and when all the bonds shall have been redeemed, rates for transportation need be no greater than may be found necessary to pay operating expenses.

"One of the incidental benefits to be derived from the proposed issue of government bonds would be the

use of such bonds for continuing national banks. Under other conditions we would not advocate the purchase of the railroads by the government; but we can see no reason to fear that the corps of railroad operators will be made a political factor, if organized as suggested; and we can see no reason why the proposed directors may not act with as much freedom from political bias and command as much confidence as justices of the Supreme Court, or other officers who hold office during good behavior, now do. While, under ordinary conditions, we believe the less business the government is charged with the better for all concerned, we, nevertheless, believe the present railroad problem contains certain elements which preclude any better solution of it."

All that is here said with respect to the possibility of a reduction of rates on account of the immense reduction of interest gained by the issuance of government bonds is correct, and the benefit to our national finances in giving a sound basis for banks and other monetary institutions, is most true and important. In the next chapter some of the serious objections to the assumption by the government itself of such an immense debt as would be necessarily created for the purchase of the railroads will be considered, and a plan of the author which, if adopted, would relieve the government of such a tremendous load will be discussed. Some of the advantages in other directions of a different method of nationalizing the railroads will also be presented.

In the spring of 1891 the author was favored with two letters from President Blackstone discussing briefly the plan for a consolidated company, which had been

set forth in a pamphlet published by the author, suggesting some objections to it, and also setting out very concisely and clearly some of the objections to government ownership. It will be seen, however, that, in spite of these objections, Mr. Blackstone believes that government ownership is preferable to the present condition of things. In reply to a letter of recent date, while stating that these letters were not designed for publication, he kindly consents to their use. As they contain some practical suggestions from an experienced railroad manager, I believe that they will be found useful and valuable in a discussion of the railway problem. They are as follows:

Chicago & Alton Railroad Co.,
President's Office.

CHICAGO, March 24, 1891.

GEO. H. LEWIS, ESQ., Des Moines, Iowa:

Dear Sir: Your favor of the 21st and your pamphlet to which it refers have been received. I have not yet found time to give your address the careful attention it deserves. Without attempting a criticism, I would respectfully make the following suggestions for your consideration:

The people should pay such rates for transportation as may be necessary to fairly support the railroads they have authorized to be constructed within the limits of their respective States, and no more. In other words, the people of one State should not be required to contribute to the support of railroads in another State.

Experience everywhere teaches that the interest of all is best subserved when property is managed by its owners or their agents. When agents are appointed to serve as managers of property during good behavior, and are governed by conditions which render it impossible for them to shift responsibility from one to another, failure to do what is required of them very seldom occurs.

So long as the people dictate terms upon which transportation

shall be given to them over railroads they do not own, selfishness will cause injustice, and it is unreasonable to expect that the service will be satisfactory.

I do not believe the people would be satisfied with governmental ownership and management of railroads; but I do believe continued disregard of the just rights of those at whose expense railroads have been constructed will never secure satisfactory railroad service, and that as a choice of evils government ownership would be preferable.

Very truly yours,

T. B. BLACKSTONE.

CHICAGO, March 26, 1891.

Dear Sir: I have your favor of the 25th. You ask if there must not be what may seem from the railroad standpoint a choice of evils. Such a choice would be desirable. But it has not yet been granted to the roads, and I see no reason to expect it, unless a very great change in public sentiment on the railroad problem should occur. If the law should require you to keep your house in good repair, pay all taxes on it, and give me the right to use it on such terms as I might see fit to name, I do not think I should want anything more until such time as you might find it to your interest to abandon the property, which my selfishness would probably lead you to do sooner or later.

If you will carefully read the suggestion I made a year ago, you will see how I proposed to give railroad commissioners in each State control over rates in the several States.

You propose that the government shall guarantee certain dividends.

It seems to me that this would place that part of the board of directors in your consolidated company elected by the stockholders in such a position as to leave no incentive for them to look carefully after the management intrusted to them. If I correctly understand you, the entire board would consist of at least ninety persons. In such a board no person would feel much responsibility resting upon him.

If I correctly understand the matter, the real objection to government ownership and management of railroads is based upon the belief in the minds of the people that they cannot trust politicians with the management of railroads under conditions

which would require the people to suffer losses resulting from their mismanagement.

Under present conditions the politicians dictate railroad management, and those who have been so unwise as to invest their money and railroads suffer the loss. Apparently the people see no wrong in this. Until they do see that it is morally wrong, what reason is there to expect any change?

Very truly yours,

T. B. BLACKSTONE.

That the student of this subject may have President Blackstone's suggestions for national ownership of the railways at his command, they are here given in full.

The Plan of President T. B. Blackstone.

"It is said that we should not complain unless prepared to suggest a remedy. We will therefore suggest the ownership of railroads by the National Government, and the organization of a corps of railroad operators, who shall remain in the service during good behavior, and be in no greater degree under the influence of politicians or political parties than the army militant. The outlines of our suggestion may be stated as follows:

"First. The National Government shall acquire the ownership of all the railroads in the United States which are now used for interstate traffic, such railroads to be acquired by the exercise of its right of eminent domain, or by purchase, under such limitations and rules as to price as Congress may determine.

"Second. Payment therefor to be made by the issue of government bonds bearing interest at a rate not exceeding three per cent. per annum, said bonds to be redeemed by the annual application of a sinking fund equal in amount to one per cent. of the whole amount of such bonds issued; the annual interest and sinking fund to be paid from the net earnings of the railroads, and the rates for transportation from year to year to be reduced, so as to provide no more money than shall be needed for such payments.

"Third. To the end that citizens of each State shall be required to pay no greater rates for transportation than shall be necessary to produce an annual amount of net earnings on the railroads of the State in which they reside equal to the annual interest and sinking

fund on the bonds issued by the government in payment for such railroads, separate schedules of rates shall be made for transportation on railroads in the several States, and changed from time to time, as may be necessary to secure that object.

"Fourth. Such railroads as may be hereafter constructed and used for interstate traffic in the several States may be purchased by the National Government or not, at its option. If the government shall at any time not elect to purchase railroads hereafter constructed and used for interstate traffic, it shall nevertheless have the right to make through rates, from time to time, for traffic over the same, in connection with other interstate lines, and all such through rates shall be divided between the several lines owned by the government and lines not so owned, in proportion to mileage.

"Fifth. A board of national railroad directors, consisting of —— persons, shall be appointed by the President of the United States, and the persons so appointed shall hold such offices during good behavior. The board of directors so appointed shall exercise general supervision over, and issue all necessary general orders relative to, the maintenance and operation of such railroads, subject to such laws as Congress may from time to time enact. It shall be the duty of said board to cause proper general regulations and rules to be prepared, which shall provide for the appointment and define the duties of all necessary officers and employees in the railroad service of the government, and shall state, in connection therewith, the amount of compensation each officer and class of persons so employed shall receive. Such regulations shall (except in cases

in which services are needed for a short time only) provide that during the first year's service each person appointed or employed shall be considered on probation, and if not discharged before the end of that year, he shall not thereafter be discharged without sufficient cause, concerning which proper investigation shall be made, the intent being to keep men in the service during good behavior, as far as practicable. All general regulations and orders shall be consistent with authority conferred by act of Congress.

"Sixth. All rates for interstate traffic on all railroads in the United States to be fixed and changed from time to time by the national board of directors, in their discretion; provided, however, that in fixing such rates the board shall see that the rates are in proper proportion with all local rates, and that the aggregate annual net earnings resulting from railroad traffic shall each year be, as nearly as practicable, equal to the amount required for the annual interest and sinking fund before referred to.

"Seventh. All schedules of rates for traffic which does not cross the boundary-line of a State or Territory of the United States may be prepared and submitted to the national board of directors by railroad commissioners or other persons duly authorized by State authority, and all schedules, when so prepared and submitted, shall be carefully examined by said board. If in the judgment of the board such schedules of rates are proper, and will produce the requisite amount of net earnings, they shall adopt the same. If the members of the board think otherwise, it shall be their duty to notify the commissioners or other State officers who have submitted a schedule which they are

not prepared to adopt, requesting a conference, that points of difference may be agreed upon, if found proper, after consultation. If such agreement is not arrived at, then the board of directors shall make such amendments to the schedule submitted as in their judgment their duty shall require, before adopting the same. Proper provision shall be made for persons injured by accident while in the service, and for such as may, after having served —— years, become superannuated."

CHAPTER XII.

INTERSTATE COMMERCE ACT AND NATIONAL CONSOLIDATION.

The Act to Regulate Commerce.—Complaints which led to this Act.—The Act Corrective and not Curative.—Unacceptable to Extreme Railroad Advocates or Social Reformers.—Accomplishes Great Good, does not remove Worst Evils.—Lawlessness of Railroad Corporations a Menace to Society.—Needs of Railway System are Common Ownership, Divorce from Politics and Low Rate of Interest.—These accomplished by National Consolidation.—Three Parties interested in Railway System: the Owners of Stocks and Bonds, the People of the Separate States, and the National Government.—These should be united in the Control of a Great Corporation, owning all the Railroads of the United States.—Advantages of this Plan.—Proposed Act for the Creation of "The Consolidated Railway Company of the United States."

A FOURTH remedy for the evils and disorders of the present railway system is governmental regulation and restriction as represented by the various State railroad commissions and the Interstate Commerce Commission.

The various acts creating these commissions, whether State or national, are palliative and corrective rather than curative in their purposes. They do not aim at absolute control, much less at government ownership. Nor in their intent did they contemplate consolidation, either under private or public ownership. As a matter of fact, they create a strong tendency toward amalga-

mation under private ownership; but this is rather an incidental result than the intended effect of the acts. They do not attempt to fix rates except negatively. They forbid discriminations in general, but the Act to Regulate Commerce, which creates the Interstate Commerce Commission, as construed by the commissioners, permits one of the worst discriminations in existence, namely, the long-haul low-rate in competition with water carriage. The various acts creating State commissions, as well as the national act, have been vigorously opposed by the railroad managers, and their purposes thwarted by every means in the power of intellect or money. Of course each State act was limited to transportation wholly within the boundaries of the State enacting the law. It was soon apparent that any effective control must be exercised by the general government, since the Constitution gave to Congress the power to regulate commerce among the several States. The people, aroused by the injustice, inequality, and manifold abuses of the railway system, clamored for some means of relief. A committee was appointed by the United States Senate and House of Representatives, who, after a long and thorough investigation, made an elaborate report stating the principal causes of complaint against that system. These causes were eighteen in number, of which twelve are based upon some form of unjust or unreasonable discrimination.

These twelve grievances due to discrimination are given below, retaining the numbers as given in the original report.

Those causes of complaint which arise from other matters than discriminations are given in a second list.

"The complaints against the railroad systems of the United States expressed to the committee are based upon the following charges:

"1. That local rates are unreasonably high, compared with through rates.

"2. That both local and through rates are unreasonably high at non-competing points, either from absence of competition or in consequence of pooling agreements that restrict its operation.

"3. That rates are established without apparent regard to the actual cost of the service performed, and are based largely on what the traffic will bear.

"4. That unjustifiable discriminations are constantly made between individuals in the rates charged for like service under similar circumstances.

"5. That improper discriminations are made between articles of freight and branches of business of a like character, and between different quantities of the same class of freight.

"6. That unreasonable discriminations are made between localities similarly situated.

"7. That the effect of the prevailing policy of railroad management is, by an elaborate system of secret special rates, rebates, drawbacks, and concessions, to foster monopoly, to enrich favored shippers, and to prevent free competition in many lines of trade in which the item of transportation is an important factor.

"8. That such favoritism and secrecy introduce an element of uncertainty into legitimate business that greatly retards the developments of our industries and commerce.

"9. That the secret cutting of rates and the sudden fluctuations that constantly take place are demoralizing

to all business except that of a purely speculative character, and frequently occasion great injustice and heavy losses. . . .

"13. That the common law fails to afford a remedy for such grievances, and that in case of dispute the shipper is compelled to submit to the decision of the railroad manager or pool commissioner, or run the risk of incurring further losses by greater discriminations.

"14. That the differences in the classifications in use in various parts of the country, and sometimes for shipments over the same roads in different directions, are a fruitful source of misunderstandings, and are often made a means of extortion. . . .

"17. That railroad corporations have improperly engaged in lines of business entirely distinct from that of transportation, and that undue advantages have been afforded to business enterprises in which railroad officials are interested."

The remaining six causes of complaint are as follows:

"10. That in the absence of national and uniform legislation the railroads are able by various devices to avoid their responsibility as carriers, especially on shipments over more than one road, or from one State to another, and that shippers find great difficulty in recovering damages for the loss of property, or for injury thereto.

"11. That railroads refuse to be bound by their own contracts, and arbitrarily collect large sums in the shape of overcharges in addition to the rates agreed upon at the time of shipment.

"12. That railroads often refuse to recognize or be responsible for the acts of dishonest agents acting under their authority. . . .

"15. That a privileged class is created by the granting of passes, and that the cost of the passenger service is largely increased by the extent of this abuse.

"16. That the capitalization and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued. . . .

"18. That the management of the railroad business is extravagant and wasteful, and that a needless tax is imposed upon the shipping and traveling public by the unnecessary expenditure of large sums in the maintenance of a costly force of agents engaged in a reckless strife for competitive business."

It will be seen that these are based upon different causes than that of discrimination, except possibly in No. 15, which relates to the granting of passes; but as these were largely used in compensation for favors done or expected on the part of public officers or politicians, it constituted an abuse of a distinct and more serious character than mere discrimination. The first three causes indicate the abuse of power which the railroads exercised as against the individual shippers. The great corporations arrogantly and arbitrarily enforced their own charges, and evaded their responsibilities with very little regard to their contracts or to justice and right.

These complaints were sustained by a mass of evidence which was simply overwhelming, and indicated how thoroughly inequitable and corrupt the prevailing railway practice was prior to the passage of the Act to Regulate Commerce. Some of the cases in evidence

before the committee disclosed such injustice and favoritism as to arouse the indignation of every fair-minded man. Every thought or idea of the railroad as a public servant, a part of whose very existence it should be to deal equally and justly with all, was entirely lost sight of, and personal favoritism or personal prejudice and animosity seemed to permeate the entire system. It is not surprising that this report created a profound sensation, and that in response to the imperative demand of the people for some relief the Interstate Commerce Act was finally forced through Congress in spite of the determined opposition of the railroads.

The purposes of this act and its true spirit have been often misunderstood or misrepresented. By those railroad men who consider railroading simply a private business, and resent any interference by public authority with the management of their business, it is denounced as a step toward socialism, and an unwarranted interference by the people with private affairs. On the other hand, by those political economists and social reformers who believe that the people represented by the government should own and therefore control all such social forces as the railroad, the telegraph, the telephone, and other systems of communication and intercourse which are for the public convenience, the act is condemned as a half-way measure, unwise in principle and inefficient in action. As has been said before, the Act to Regulate Commerce was not intended to change the principles upon which the railroads are based, but to correct some of the most grievous evils which had developed in the actual working out of the existing railway system.

In the Supreme Court of the United States at the October term, 1891, in a case involving the right of a railroad to issue "party-rate" tickets—that is, tickets at a reduced rate to parties of ten persons or more—Mr. Justice Brown, in giving the decision of the court that such tickets were permissible under the Interstate Commerce Act, gave a succinct statement of the objects of that act. He said: "The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations, or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons traveling over the road. In other words, it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail." *

It will be seen from this that the purpose of the act was to meet, as far as possible, the various complaints which had been made in the evidence taken by the commission prior to the passage of the act. It is therefore unjust to claim that it has not accomplished what it was not intended to accomplish, namely, a

* Interstate Commerce Commission *v.* Baltimore & Ohio Railroad Company, 145 U. S. Reports, p. 276.

radical change in the organic basis of the railway system. It is the contention of the writer that no act or measure of any kind will be really effective which does not make an absolute change in the fundamental principles of that system. They are, as I believe, totally and intrinsically wrong. And no remedy will be long satisfactory which does not make a complete transformation and set the railway system upon correct economic principles.

The Interstate Commerce Act is a step in the right direction, and such regulation as it makes is infinitely better than no regulation.

The assertion has been made frequently by interested railroad advocates that this act had been practically set aside or nullified, and that the commission had accomplished nothing. This claim is made with great vehemence on one hand by railroad officials, who strongly oppose any governmental regulation, and on the other hand with equal vigor by extreme advocates of railroad ownership and control by the government. While it is true that neither the State Commissions nor the National Commission have accomplished all that was expected of them, it is nevertheless true that many abuses have been repressed and many evils abated, temporarily at least. But neither the various acts nor the commissions themselves go to the root of the difficulty. If correction is applied in one direction, the same abuse in a new form or an entirely different one springs up to take its place. Beneath the repressive forces of these various acts is the seething, boiling strife of private competition seeking to evade the law by every means possible.

In fact, these various acts and commissions, the

National Commission included, are much like a series of great rafts placed here and there on the surface of a boiling sea, in the vain effort to repress its angry waves. The waves are held down, it is true, under each raft, with much danger to its occupants, and with much straining and creaking of the raft itself, but the waves swell and roll all the more furiously where the raft does not cover them.

As illustrations of the criticisms of the Interstate Commerce Act and the commission from two wholly diverse sources, the following quotations may be given.

The first is from the evidence of a prominent railway manager before the commission, and is given as an argument against any governmental control.

The second is from an article by Mr. T. V. Powderly, in the *Arena* for December, 1892, in which he argues for ownership and entire control by the government.

"First. Rates are absolutely demoralized, and neither shippers, passengers, railways, nor the public in general make anything by this state of affairs. Take passenger rates, for instance; they are very low, but who benefits by the reduction? No one but the scalpers. In freight matters the case is just the same. Certain shippers are allowed heavy rebates, while others are made to pay full rates. . . . The management is dishonest on all sides, and there is not a road in the country that can be accused of living up to the Interstate Law. . .

"Second. Governmental control of railroads has not succeeded, and never will succeed. So long as it is in the power of a board of directors to increase stocks (all water), issue bonds, and give rebates in secret, the people will have to pay for all the water and

the interest on the bonds. Favors are shown to trusts and combines; the trusts and combines are made up of the directors and stockholders of the railroads; they secretly allow rebates to their favorites, such institutions as have railroad directors on the roll of stockholders having an undoubted advantage over their competitors. No system of governmental control can reach the offenders. Public control is inconsistent with the idea of private ownership, and private ownership of public institutions is not consistent with well-founded principles of public policy and welfare. Public control without public ownership is an impossibility. What the government has a right to control it has a right to own and operate. Ownership must precede control, and the question must be solved in a very short time, or those who own the railroads will own the government."

Horace long ago said, "*In medias res tutissimus ibis*," and it is possible that this middle course represented by the commission is wiser than either of the extremes by which it is criticised. The commission was given an herculean task. It was required to enforce an act which attempted to correct the evils of the railway system without removing their causes. As shown by Mr. A. B. Stickney in "The Railway Problem," the work set for the commission to do was far too large for the number of commissioners and the powers bestowed upon them. It is a significant fact, not creditable to the wisdom or generosity of Congress, that the railroads represented in a single traffic association could offer to one of the ablest of the commissioners, Mr. Aldace F. Walker, a position which was more attractive than that of United States Railway

Commissioner. But the commission has always been composed of able men honestly devoted to carrying out the real purposes of the act. It is not the purpose of the writer to discuss at length the labors of the commission. To do so thoroughly would require an entire volume. But full credit should be given for arduous and, in the main, useful and helpful work, in repressing evils and checking abuses, and to a considerable extent regulating the practical operations of the railway system. It is true, nevertheless, that serious evils and abuses still continue, and will inevitably exist under the present organization of the railroads. At the same time the commission should be honored for its faithful effort to serve the interests of the people, and hearty assent and commendation can be given to the following extract from its sixth annual report:

"Of this much we are convinced: The public demand for government regulation and the necessity for legal protection against the encroachments of railroad corporations have not been diminished by the experience of the last six years. The Act to Regulate Commerce was not framed to meet a temporary emergency, nor in obedience to a transient and spasmodic sentiment. The people will not tolerate a return to the injustice and wrong-doing which inevitably occurs when no correction is undertaken and no regulation attempted. The evils of unrestricted management will not be permanently endured, and legal remedies will continue to be sought until they are amply provided. The present statute, however crude and inadequate in many respects, was the constitutional exercise of most important powers and the legislative expression of a great and wholesome principle. Its fundamental and

pervading purpose is to secure equality of treatment. It assumes that the railroads are engaged in a public service, and requires that service to be impartially performed. It asserts the right of every citizen to use the agencies which the carrier provides on equal terms with all his fellows, and finds an invasion of that right in every unauthorized exemption from charges commonly imposed." *

This statement of the principles of justice and fair dealing on which the act is based shows its high intention, and the commission has nobly striven to accomplish its purposes. But after full and generous allowance is made for all that has been achieved, still it must be said that the worst evils of the railway system are untouched, and its most serious abuses are unchecked.

The Interstate Commerce Act has not suppressed secret rebates or local and personal discriminations, or the fierce, unscrupulous strife for business. It has not done away with bribery of political officers, or corrupt manipulation of politics by railroads for their own ends. It has not put an end to rate-wars, with their manifold evils to the business and financial interests of the country. It has not in the slightest degree prevented the iniquitous practice of making railroad securities a trap with which rich stock manipulators ensnare and impoverish legitimate investors, as, for example, in the rise and downfall of the Reading Combine, and in the destruction of the value of railroad securities in the fall of 1891. This act and all the commissions have not removed the real causes which create the irritation

* Advanced copy Sixth Annual Report Interstate Commerce Commission, p. 7.

between the railroads and their employees, as many disastrous strikes amply prove, of which those at Buffalo and Toledo are but the latest instances. The act has not made the railroads law-abiding and willingly amenable to lawfully constituted authority. These corporations need most of all to encourage and strengthen the habit of obedience to law, for their own protection. They make loud complaints that the people disregard alleged contracts (which in most cases they never really made), but themselves override and disregard legally enacted statutes if they judge it for their interest to do so. One of the greatest railroad corporations in the State of Iowa has for three years wantonly refused to obey a valid statute of that State, requiring a yearly report of its earnings and expenses, a law with which all other roads in the State comply. Its headquarters are located, and its leading American owners live, in a city and State which justly boasts of its willing obedience to law; but these men as railroad officials are, by their example and practice, doing all in their power to discredit law and dishonor its authority.

Often private rights are trampled on by these corporations or their officers, who trust to their power for immunity from punishment. They are sowing the wind and must expect to reap the whirlwind. Men who have little or no interest in the stability of society, and nothing to lose from its instability, cannot be expected to honor the sanctions of law when rich and powerful individuals or corporations ignore them.

I solemnly arraign the railway system of this country as a most dangerous foe to the sanctity of law and the perpetuity of orderly and free institutions. By its arrogant disregard of private rights and common jus-

tice, by its unscrupulous corruption of legislatures and courts, by its determination to secure its ends in spite of the will of the people, either by the brute force of money or by secret fraud and corruption, it has set the most dangerous example of lawlessness by private citizens in the entire course of our national history. This is not true of all roads nor of every railroad official. But the temptation is to conceal the individual behind the corporation, and so avoid direct responsibility for questionable acts or evil and corrupt practices.

Private ownership simply is not the cause or source of all the evils of the railway system. If the railroads were all owned by one man, or by one great private corporation, as proposed by Mr. C. P. Huntington, there would be no rate-wars or rate-cutting, secret rebate, or other evils of that class. There would be no unrestricted competition, which Mr. Aldace F. Walker shows is self-destructive. The roads all having a common interest, no temptation would exist to perpetuate these abuses. But being one vast monopoly, other and worse evils might, and undoubtedly would, prevail. If the National Government should buy up the roads, while nominally it would own them, in fact the ownership would be in the individuals and institutions furnishing the money to buy the bonds which the government must issue to purchase the roads. Nor is governmental control necessarily the best method of managing the railroads. It might be the worst possible method if under the control of a corrupt and unscrupulous coterie of politicians. In such a case neither property nor business interests nor commercial or political liberty would be safe. What is wanted is:

First. The complete removal and destruction of the

vital cause and creative matrix of all the wrongs and abuses of the railway system, viz., the conflicting interests of private capital invested in antagonistic systems of railways, each striving for all the profit possible, without regard to the public interest or the welfare of its rivals, and each protected by complete or partial monopoly.

Second. A single vast organization which shall absorb all independent and antagonistic systems, and achieve the untold benefits of complete consolidation without the vices of private monopoly; which, while just to every section and interest, shall be free from the evils and vicissitudes of party politics; and which shall command the low rates of interest that the national credit secures, without overwhelming the National Government with a debt so vast as to endanger its perpetuity.

Third. The reduction in the rates of transportation made possible by the large reduction in the interest and dividend charge, due to the lower rate of interest such a consolidated company could secure, and by the great economies which complete consolidation and a common interest and ownership would necessarily effect.

Private ownership under the old system will not accomplish these great ends. It was tried until the patience of the people was worn out. As the commission well says: "The people will not tolerate a return to the injustice and wrong-doing which inevitably occurs when no correction is undertaken and no regulation attempted." Government ownership will not effect all these beneficial reforms, at least under the present conditions of our civil service and the theory

of partisan politics, now too largely held by all political parties, that the spoils of office belong to the victors. To subject the business of the country through the transportation system to the vicissitudes of party politics and the vices of political management would be madness. President Blackstone, with his characteristic clearness of perception, in the letter to the writer dated March 26th, which will be found in the preceding chapter, stated one of the weightiest objections to this plan of reform in the following words:

"If I correctly understand the matter, the real objection to government ownership and management of railroads is based upon the belief in the minds of the people that they cannot trust politicians with the management of railroads under conditions which would require the people to suffer losses resulting from their mismanagement." It is true that Mr. Blackstone, in spite of this objection, believes that government ownership would be better than the present chaotic and inharmonious condition of things.

If some plan can be devised by which a union of all the railways of the country can be effected without subjecting the business of transportation to the evils of political management, and without loading the government with an overwhelming debt, or binding the commercial interests and all the passenger and freight traffic of the nation in the fetters of a huge private monopoly, all these great and much needed reforms can be accomplished. I believe such a plan can be found in national consolidation and control of all the railways of the United States, as distinguished from governmental ownership and control, or amalgamation under private ownership with its resulting monopoly.

As has been stated in a former chapter, consolidation in some form is inevitable. This would remove some serious evils of the present system, but if under private ownership worse evils would result. If consolidation should be effected through governmental purchase of all the railroads, a similar result would ensue. The evils due to conflicting interests of various roads would be obviated, but until our party politics can be raised to a higher plane than they now occupy, corruption and mismanagement, and an intensified party struggle at each election would result. By the plan of national consolidation all the advantages of complete and harmonious union will be secured, and the government will not be loaded with a debt beyond its capacity to carry, nor will the business of the country be thrown into the arena of party politics to be made a prize for adroit and unscrupulous political leaders.

It may be asked what is meant by national consolidation of the railways of the United States? In reply to the inquiry, I will here briefly sketch its outlines, leaving a fuller discussion for later chapters. Like other plans for nationalization of the railways of the United States, it is based upon the power given to Congress by the Constitution to regulate interstate commerce. This power is contained in Section 8 of the Constitution, which section reads as follows so far as it relates to this subject:

"SEC. 8. The Congress shall have power: . . . To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The scope and power of this provision have received much consideration within the past thirty years, but its full meaning we have hardly begun to appreciate. It

has been explained and illustrated by many able and protracted debates in Congress resulting in wide-reaching enactments. It has been expounded in many weighty decisions of the Supreme Court of the United States, but it is yet far from a full exposition. Under this section it is possible that Congress could legally enact that all railroads of the United States should be consolidated into one system, under such protection for the owners of the systems as Congress in its discretion might enact, and subject of course to the constitutional requirement that no private property shall be taken for public use without due compensation. This I say is possible; but so great a stretch of congressional action is not required for our proposed plan. It is, however, certain, from the action of Congress in many instances, covering a century of our nation's existence and sustained over and over again by decisions of the Supreme Court of the United States, that Congress can create a great national corporation authorized to purchase all the railways of the United States under just provisions for compensation to their owners. This precise power in kind has been exercised by Congress in many instances. To create such a corporation would simply be exercising a little more power, or at least creating a little larger corporation than Congress exercised in creating the Union and Central Pacific Railways, or the Northern Pacific Railway, or any other of the many roads which owe their existence to national authority. To create a single corporation, authorized to absorb into itself all the railways of the United States, would not be different in principle in any respect from the action of Congress in creating these corporations, the only difference being one of magnitude and

not of law. Let us suppose that Congress should create such corporation, which we may call "The Consolidated Railway Company of the United States." This company should be authorized to acquire by purchase or by condemnation all the railways of the United States engaged directly or indirectly in interstate traffic. This means every railroad in the United States in effect. Besides, it will be seen later that the power of Congress is not limited to the acquisition of railroads which pass through two or more States. It may legally acquire a railroad although it lies wholly within a single State. To pay for the railroads which by voluntary or legal action are merged into this consolidated company, the corporation should be authorized to issue its own stock bearing a rate of dividend or interest not exceeding three per cent. per annum, the payment of which interest should be guaranteed by the United States. This stock would be an investment of the most substantial and safe character imaginable. The net earnings of the entire railway system of the United States would be pledged to pay the interest, besides the guaranty of the government, while the entire property of the railroads of the United States would be the security for the principal. The stock would be sought after as an investment, not merely by the holders of the present railway stocks and bonds, but by every class of legitimate and conservative investors in this country and in Europe. It would furnish the most substantial and unfluctuating basis conceivable for banks and all other financial institutions. It would establish the finances of our country on a firm and unshakable foundation. The affairs of this great consolidated company should be managed by a combination

of control derived from the representation of the owners of the stock and the people of the United States. There are three parties who must be represented in any successful union of the railways of the nation.

The first is the owners of the stock and bonds. They should be represented strongly, so that their property could not be stolen by adroit and corrupt men, nor lost through the incompetency of political managers.

The second party is the separate States of the Union, whose local interests must be given due consideration.

The third is the nation as a political entity, having a vital interest distinct from the other parties, which should have a strong but not a controlling interest.

All three of these parties are now interested in the success of the railway system, and all prosper under its right organization and management or suffer under opposite conditions.

The President of the United States, by and with the advice and consent of the Senate, should appoint the president of this company and six commissioners, one half of the latter to be from each of the two largest political parties. Each State which is now or shall be hereafter a member of the Union should appoint one commissioner in such method as may be adopted by the legislature of each State. The stockholders of the company should elect as many commissioners as the United States and the various States in the aggregate elect.

To prevent rich men or great corporations from gaining control of this company, a limitation of the amount of stock to be voted for by any one person or institution should be made. President Blackstone

made the criticism of this plan that the number of commissioners would constitute it an unwieldy body. This objection was foreseen and provided against by the requirement that the direct administration of affairs should be under the control of an executive committee of five, of whom the president should be ex-officio chairman. To remove the vast transportation system, and with it the business of the country, as far as possible from the strife of politics, it should be provided that all appointments, whenever practicable, should be divided equally between the two leading political parties. All officers and employees should be appointed for fixed periods of time, and should not be removed except for good cause shown.

To secure this consolidation, Congress should levy a license or excise tax of ten per cent. on the gross earnings of all railroads which fail to comply with the terms of the proposed consolidation within a reasonable time. This tax Congress has abundant authority to establish, either as a tax or as a penalty or license, as any one may prefer to call it. It is merely a question of names and not of right or power. This power was freely exercised by Congress in creating the national banking system, one of the provisions of which is that any State bank issuing currency after a specified time shall pay a tax of ten per cent. This section of the act was immediately attacked, but was sustained by the Supreme Court. It is claimed to be unconstitutional to use the revenue power ostensibly for taxing purposes, but really in the nature of a penalty to enforce some other provision. This constitutional objection has been used with effect also in the discussion of the Oleomargarine Act, and in the long and able debates

in both the House and the Senate over the Anti-Option Act. It is conceded, however, by the expounders of the Constitution of both schools of construction, that Congress, where it has authority to regulate any business or subject, may legally affix a penalty for violating the provisions of any act it may pass in accordance with the Constitution to accomplish such regulation, or it may require a license or excise tax to be paid, and this tax may be made equal in amount to any given per cent. of the gross earnings or gross profits of the business in respect to which the regulation is exercised. It will thus be seen that it is in fact a mere difference in names, whether it is called a tax or a penalty. Complete and safe consolidation of the railroads, although complicated and difficult, is easier of attainment than governmental ownership of the roads. However, this would be as desirable as consolidation of the railroads, if practicable. These roads under our present civilization are our great highways. It is certainly not *theoretically* wise that the nation should be bound in fetters of iron by the right of ownership of its means of transit in the hands of any private citizen, or of any corporation except one of its own creation and under its own control.

But the difficulties in the way of the acquisition by the government of the vast railroad properties, without disturbing the private right of ownership on the one hand, or without loading upon the tax-paying public an unnecessary burden of debt for the enrichment of railroad interests on the other, are very great. And the wisdom of absolute ownership of the roads by the government under the present conditions may be questioned.

Some objection has been made to the power of the people legally to gain possession of the railways, but this objection is certainly untenable. The railroads themselves have freely used a mighty weapon for their own purposes, called "The Right of Eminent Domain," but this is, like many other weapons, a two-edged sword. Concisely stated, so far as it relates to our subject, it is that one portion of the people called the railroad corporations have the right, on grounds of public policy, to acquire private property which they may need for their uses upon paying a reasonable compensation, to be determined by the people through certain forms of law. If a limited portion of the people, called a railroad corporation, can take private property upon paying for it adequately, certainly all of the people can take any private property on the same terms. The fact that the railroad is a large corporation, and the owner of the farm or city lot is an individual, has legally nothing to do with the case.

As said before, the difficulties and magnitude of the problem are increased, but the principle is precisely the same. One of the difficulties in such a question would be to determine what is a fair compensation in any case for a particular railroad sought to be condemned. A part of this difficulty arises from the exceedingly diverse points of view from which the question may be regarded. On the one hand, some rather advanced but perhaps not very careful thinkers insist that there shall be no water in the stock of any railroad which may be purchased, but only the actual cost of the railroad shall be allowed to its stockholders.

Another argument for the position above referred to is that many roads have been built, to a greater or less

extent, from the proceeds of land grants made by the United States Government. In too many cases, it is a question whether these grants have been applied to their legitimate use, or have been, by one process or another, diverted to the advantage of the promoters of the roads. In some cases, too, it is probable that a better road would have been constructed if the railroad managers had not built their line rather with the purpose to secure all the government grant possible than to build a good railroad and accommodate the public.

The history of these land grants suggests many questions of much interest and importance, and in some cases amusing developments are found. Two instances will suffice: The State of Iowa granted a certain railroad corporation alternate sections for six miles on each side of the road, to be patented to the company in installments or sections of twenty miles in length, each installment thus covering 120 sections, or 76,800 acres. The patent was issued for the first 120 sections, and the company did a little surveying and some grading, but never built a mile of railroad. Notwithstanding, it was held by the Supreme Court of Iowa and of the United States that they were entitled to hold the 76,800 acres of good land which they had obtained. Their principal service to the public consisted in the organization of a railroad company under the Iowa code, which is certainly not an arduous undertaking.

The State of Arkansas made a grant of lands to a railroad corporation conditioned upon the completion of certain sections of the railroad before the proportion of land belonging to that section should be granted to the company. Apparently the State was protected by this provision, but the company graded and placed the

iron upon the required section, received its ratable proportion of the land, and, after obtaining its patents, deliberately took up the iron from the section supposed to be completed, and used it to complete another section. How often this process was repeated I am not informed, but these two instances will illustrate some of the corrupt practices of railroad builders. In many cases, perhaps the majority of cases, the lands granted by the United States or by individual States to aid in the construction of railroads were disposed of to construction companies or private individuals at a low value, and the roads failed to get the benefit from this great donation. Individuals made enormous fortunes.

The reply made by railroad representatives to the argument for governmental control so far as it is based on public donations, is that the land was worth but a low price when granted, and that the construction of railroads has enhanced the value for the whole community. This is, like many other arguments, a half truth; but it is also true that the communities through which the railroads run, by their industry and by the creation of business, have supported, and in many cases enriched, the railroads. If these lands had been held and carefully husbanded by the railroad companies, the proceeds would have paid a large proportion of the bonded indebtedness of most of the lines, and the stock would have been proportionately enhanced in value; but this would not have benefitted the public by a reduction of obligations upon which dividends or interest must be paid out of the traffic charges.

But whatever may have been the original equities between the public and the railroad companies as to watered stock or these land grants, it is in many cases

too late to consider the question. The shares of stock, watered or unwatered, have passed into the hands of innocent purchasers, in the majority of cases, and are held by savings-banks, life insurance companies, and trustees of estates, and often form the bulk of the property of multitudes of widows and minors. All these parties have paid the market value for these stocks, and whether watered or unwatered, the stocks cannot be taken away from them for less than their present value.

Moreover, in estimating the cost of any railroad, to the expense of its original construction must often be added the cost of maintaining the road for a long series of years without profit, and frequently at a heavy loss.

Undoubtedly the only practical method of acquiring the ownership of any railroad would be to pay for it the market value of its stock, at an average condition of the market. Railroad stocks which pay regular dividends are usually worth, aside from temporary fluctuations, such a price as will net the investor about three per cent. per annum plus a hypothetical payment for taxes. Assuming that the market value of these stocks represents the actual worth of any railroad, its shareholders would not be injured if they should receive the value of their stock in bonds of the United States drawing interest at three per cent., which should be non-taxable.

Under a uniform and harmonious administration, the railway system would be more economically and profitably carried on, and the earnings of the roads would meet the interest accruing upon the bonds. But if the value of the railroad properties of the United States is even approximately as stated heretofore (that is, $11,000,000,000), the objection may be urged with

great force that by the issuance of such a vast sum in bonds the credit of the nation would be destroyed. This is a serious objection, although on careful examination it will be found to have more apparent than real weight. In reality, the people of the United States are *now* burdened by this same debt. The fact is that the majority of the people who are not owners of railroad stocks in effect owe this vast sum to those who are stockholders. If the government as a body politic should owe it to the bondholders, it would be a difference in name, and not in reality. Out of the proceeds of their business, the non-shareholders or all users of railroads must pay the income of the shareholders, and the burden would be the same in either case, except so far as governmental control might promote economy of administration.

But the objections to loading so enormous an incumbrance upon the National Government are serious, and if some middle ground could be devised which would obviate the creation of this great debt, and remove also some of the weighty arguments against governmental ownership of the railroads, it would be greatly to the advantage of the people. I believe that such a middle ground can be found in national ownership and control as distinguished from strictly governmental ownership and control.

By this plan the most grave and perplexing problems necessarily arising in any scheme of governmental ownership of the railroads will be avoided and all the great beneficent purposes of consolidation and harmonious interests and uniform and stable management will be attained.

The nation will not be overwhelmed and bankrupted

by a colossal debt, while a permanent value will be given to the stock of the consolidated road by the Federal guaranty of dividend. All the vexed and insoluble questions now harassing railroad owners and managers as well as the public, arising from joint and competitive traffic, secret rates or rebates, railroad wars, and the long catalogue of evils attending the present system will disappear like mist before the morning sun. Owners of the stock can rest in perfect security, not fearing lest some unscrupulous manager should wreck their property for his own advantage, or some jealous or overbearing superintendent involve their road in a war or a disastrous strike.

Not the least of the blessings of the consolidation would be that the business of manipulating railroad stocks, either for the purpose of "fleecing the lambs" or destroying business rivals and grasping fortunes by ruining others, would be forever destroyed.

The stock of the consolidated company would afford a safe and permanent basis for banking and for the investment of all trust funds, including the accumulations of all the great fiduciary institutions of the country.

Again, a grave objection to absolute government ownership is, that a large amount of property would thereby be exempted from local taxation, but under the plan proposed no change would be made in this respect, except to the limited extent to which railroad stocks are now taxed.

Another serious objection to absolute ownership by the nation is, that after the rights of stock and bond holders of the various roads had become merged in the national debt, there would be no private rights interested to keep up rates to a point sufficient to main-

tain the roads in good condition and meet the regular payments upon the interest and sinking fund. There would gradually develop a strong pressure to lower the rates little by little, and ultimately to throw the entire burden upon the general revenues of the nation. But by the proposed plan, a great body of stockholders would exist scattered throughout the nation, vitally interested to preserve rates of traffic at a point where these various charges could certainly be met.

This great body of stockholders would not only be protected by the courts in their legal rights, but they would also exercise a powerful influence in all elections against any attempts at radical changes in legislation.

And finally, the grandest and most beneficent result of this plan, I firmly believe, would be that all the distressing and dangerous conflict between railroad managers and their employees would be forever done away. This antagonism has once at Pittsburg broken out in a fearful and bloody riot, in which property and lives were accounted of no value by the frenzied mob. More recently, in the great strikes on the Chicago, Burlington & Quincy Railroad, and others, the antagonism assumed a more quiet but not less dangerous form. On one side the great railroad systems were seriously crippled, while on the other the men lost employment for months, and much suffering was occasioned in spite of contributions from labor societies. This hostility and bitterness of feeling between two such great powers as the railroad systems and the labor organizations is a most portentous and dangerous cloud on our political horizon. Social conditions much less threatening to outward appearance have in the past destroyed great nations.

That these feelings of hostility are smoldering with deep intensity beneath the surface has been shown in many strikes, and in the speeches and writings of prominent labor representatives. Many of these ideas and expressions are unpatriotic, and not in harmony with American principles. But their expression by eminent and usually conservative representatives of the cause of labor is an omen of evil of the most serious import. In other countries the interval between rash words and violent deeds has not been great, and we ought to profit by their experience.

Great bodies of industrious and intelligent American laborers are not inspired with such feelings of enmity without strong and long-continued provocations. But the true reason for the wrongs and hardships to which the workingmen have often been subjected, and which have been reflected in destruction to railroad properties, lies not mainly in the faults of railroad managers, but in the inherent viciousness and wrong of private ownership in conflicting and hostile railroads. If this fatal defect shall be removed the causes of contention will be swept away with it, and this most alarming evil of our social condition will be swallowed up in the harmonious and glad-hearted coöperation of all.

In this chapter the legal principles involved have been asserted or assumed without citing authorities. In a later chapter the fundamental principles upon which this plan is based will be discussed, and ample authority shown for every constitutional or legal question arising under this consolidation.

For the purpose of setting out more clearly the details of the proposed consolidated company, I have appended to this chapter the outlines of an act for the

creation of such a corporation as is here advocated. It is not supposed that the act is complete or faultless. It is given merely as a suggestion of the principal points of this reform which the author believes will be of value in a solution of the railway problem.

"AN ACT TO REGULATE COMMERCE BETWEEN THE STATES CARRIED ON WHOLLY OR IN PART BY RAILWAYS.

"SEC. 1. For the purpose of regulating the transportation of persons and merchandise of any description, including express and mail matter, from one State into or through any other State, by means of railways using steam or any other motive power, there is hereby created a railway corporation to be called 'The Consolidated Railway Company of the United States.'

"SEC. 2. The affairs of the said company shall be managed by a president, secretary, treasurer, auditor, and a board of commissioners, which officers shall be chosen as follows:

"The President of the United States, by and with the advice and consent of the Senate, shall appoint the president and six commissioners of said company, of which commissioners one half shall be selected from each of the two political parties polling the greatest number of votes at the last preceding presidential election. Each State now or hereafter admitted to the Union shall be entitled to one commissioner in said company, who shall be elected by the people of said State at a regular general election, or selected in such other manner as the legislature of each State may determine.

"The owners of stock in said company, under such regulations as may be prescribed by Congress, shall be entitled to elect as many commissioners as the several States in the aggregate are authorized to elect, but no person or institution shall vote, directly or indirectly, more than $10,000,000 of stock.

"SEC. 3. The president of the company shall be ex-officio chairman of the board of commissioners, and this board shall elect the secretary, treasurer, auditor, and an executive committee of five from their own number, of which committee the president of the consolidated road shall be a member and shall be chairman.

"All officers and regular employees shall be appointed for fixed periods of time, and shall not be removed or suspended from office during such periods, except for mental or physical unfitness, or for a criminal offense. No officer or employee shall be removed for political reasons, and in making appointments they shall, as far as practicable, be equally divided between the two principal parties, as shown by the last preceding presidential election.

"SEC. 4. The term of office of the president of said company shall be nine years, and he shall not be eligible to reappointment. He shall appoint a general superintendent and a division superintendent for each State, who shall hold office for six years, but may be removed by the president, with the concurrence of the majority of the executive committee, for incapacity or unfitness. Three members of the executive committee, with the concurrence of two thirds of the board of commissioners, may remove the president or any general or division superintendent for sufficient cause shown.

All the officers of said company, including the general and division superintendents and commissioners, shall be ineligible to any political office during their terms of service and for two years thereafter, and the acceptance of any nomination or appointment to any such office shall *ipso facto* create a vacancy in the office.

"SEC. 5. Said corporation shall have the power to sue and be sued in any court of the United States, but not of any State. And in any action at law or in equity, the company shall be represented by its own attorney, and it shall be the duty of the district attorney of the United States to prosecute or defend for the adverse party, under such regulations for protection against vexatious suits as Congress may provide. It may hold, buy, sell, and transfer any real estate or personal property, but may not mortgage or in any way pledge the same except that the earnings of said company may be pledged as hereinafter provided. It may purchase, own, construct, and operate railway lines using steam, electricity, or other motive power, and employed, wholly or in part, in interstate commerce. It may have all other powers implied by law or incidental and proper in carrying out the above powers, except that it shall not borrow money for any purpose. The private property of the stockholders shall be exempt from the debts of the corporation.

"SEC. 6. Every railway chartered or incorporated by the United States, or by any State, which shall, directly or indirectly, carry on interstate commerce after this act shall take effect, shall pay into the treasury of the United States a yearly tax equal to ten per cent. of its gross receipts from all sources, which tax

shall be a lien on the franchise, rolling stock, road-bed, and property of every description owned by such road, and may be collected by a sale thereof if unpaid for six months after the expiration of each fiscal year of said road.

"SEC. 7. Every railroad in the United States chartered or incorporated by any State or by the United States, may by vote of its stockholders elect to surrender its charter or articles of incorporation and be entitled to the privileges of this act. The proper officers of such company shall at once inform the secretary of the consolidated company of such election, and shall forward to him a full and complete schedule of the outstanding stock of said company and of its assets and liabilities of all kinds.

"But before consolidation shall be completed, and stock of the consolidated company issued as hereinafter provided, said first-named company or companies shall be required to take up all floating debts of every kind, either by actual payment or by an agreement of the creditors to accept stock of the consolidated company at par in lieu of the actual cash value of their claims, the details of which agreement shall be subject to the approval of the executive committee of the latter company.

"SEC. 8. The secretary of said consolidated company shall thereupon inform the board of commissioners of such election, and they shall immediately proceed to ascertain, as nearly as practicable, the actual value of the stock of such road, and for that purpose the average market value thereof for twelve months prior to such application shall be considered *prima*

facie its actual value, unless meanwhile its value shall have been changed by the issuance of bonds, the payment of floating indebtedness, or other extraordinary circumstances.

"SEC. 9. When the market value of the stock of any railroad proposed to be surrendered or abandoned shall have been ascertained as above provided, it shall be the duty of the secretary of the consolidated company, under the direction of the board of commissioners, to issue to the proper officer or officers of said surrendered company, such an amount of the stock of the consolidated company as shall equal the market value of the stock of said first-named company, which shall be by said officers distributed to the persons entitled thereto.

"Thereupon, the consolidated company shall be entitled to all the franchises and rights of said abandoned company and to all its property of every description, and shall be liable for all its bonded indebtedness.

"SEC. 10. The stock of said consolidated company shall pay a dividend of three per cent. per annum, payable quarterly, and no more, and said dividend shall be guaranteed by the government of the United States, and the net earnings or income of all the roads which may avail themselves of the privileges of this act shall be pledged to the payment of said dividend so far as needed for that purpose.

"SEC. 11. The secretary of said consolidated company, under the instructions of the executive committee, may issue stock of said company at not less than par for the bonds of any company or companies which may be incorporated into said first-named company, which bonds are or shall become due, or as to

which an option to pay before maturity exists, provided the holder of said bonds will receive said stock for the market value of the bonds, to be ascertained under such regulations as the executive committee may prescribe.

"Or said secretary may sell to the highest bidder for cash, at not less than par, the amount of stock necessary to take up all of said bonds. But no stock of said consolidated company shall ever be hypothecated or in any manner pledged to raise money for this purpose. Nor shall the franchises, road-bed, rolling stock, real estate, or any other property, be subject to attachment for any debt, or to execution issued on any judgment or decree, or to any other process from any court whereby it is sought to appropriate any of the rights, franchises, or property of said consolidated railway company, to the payment of any claim.

"SEC. 12. Whenever by the final decree or judgment of any court of competent jurisdiction it is adjudged that the consolidated company is indebted to any individual or company for any sum of money, the same shall be certified by the judge of the court rendering the judgment, attested by the clerk of said court with the seal thereof, to the treasurer of said company, and said judgment shall thereupon become a lien upon the net receipts of said company, and if more judgments than one exist they shall become liens in the order of their rendition, and it shall be the duty of said treasurer to pay such judgments in their order as the net income of said road shall permit the same to be done.

"SEC. 13. The board of commissioners shall appoint a committee of three persons, experienced and

competent railroad men, whose duty it shall be to prepare schedules of traffic and passenger rates, which shall be on such a basis as shall meet, as nearly as can be estimated, the expense of operating and maintaining said consolidated road, paying dividends on the stock, interest on the bonded indebtedness, and such a further sum as shall provide a sinking fund sufficient to extinguish the bonded debt and stock within one hundred years.

"SEC. 14. The provisions of Section 5 hereof shall take effect one year after the passage and approval of this act. And within thirty days after this act shall take effect it shall be the duty of the President of the United States to appoint a provisional president, secretary, auditor, and treasurer, and six commissioners of said company, who shall hold office for one year, or until the appointment and qualification of their successors, but not more than two years.

"The secretary of said company, under the direction of the President of the United States, shall invite the governor of each State to appoint a provisional commissioner with like terms of office as above, and the secretary shall also invite the presidents of an equal number of the principal railroads in the United States to select each one commissioner. If the governor of any State or States or the president of any railroad shall neglect or refuse to appoint such a commissioner within thirty days, it shall be the duty of the President of the United States to appoint commissioners to fill such vacancies. All of such provisional officers and commissioners to be appointed as nearly as possible in equal numbers from the two leading political parties. The officers and commissioners so

appointed shall be the provisional incorporators of said company, and it shall be their duty to prepare statistics of such companies as may determine to accept the provisions of this act, and to do and perform such further acts as may be necessary and proper in carrying forward the purposes thereof."

CHAPTER XIII.

PUBLIC AND PRIVATE CONTROL OF RAILWAYS CONTRASTED.

C. P. Huntington's Plan for Union of All Railways under Private Ownership.—Only Remedy for Present Demoralization is Joint Ownership.—This Plan and that of the Author have Same Purpose, viz., Consolidation of All Railways.—Economy would be the Result under Both Plans.—Under Private Control, for Benefit of Stockholders, under Plan of Author for Benefit of the Public.—Enormous Power of such a Consolidation.—Great Danger if in Private Hands.—Temptations to Abuse of Power removed by National Consolidation.

The *Railway Review* for August 22 and 29, 1891, published two articles written by the author of this book, advocating consolidation of all the railroads of the United States into one great corporation, managed by a combination of governmental and private control. This is the plan outlined in the preceding chapter, and which it is the purpose of this work and the desire of the writer to bring to the public attention.

By a coincidence the *North American Review* for September of the same year contained an able article from the pen of Mr. C. P. Huntington, the distinguished president of the Southern Pacific Railroad, in which he advocated national consolidation of all railways, but under private control exclusively. The long experience, large ability, and great wealth of Mr. Huntington give to anything from his pen an impor-

tance and prominence which cannot be claimed for anything the writer may say. But he has been trained for half a long life in the old methods and ideas of railroading. He has acquired a vast fortune through these methods, which may not be for the public good, however favorable they may be for private aggrandizement. The inertia of habits of thought long fixed in one groove, and the bias of millions gained through the opportunities of the old system would render him less open to new methods, possibly more for the advantage of the whole people, than one might be who has no other interest in the matter than any intelligent citizen might have who had given thought and study to this vast and most important subject.

The railway magnate would naturally and inevitably think well of a system through which he has gained a great fortune. It certainly has worked well for him, and it is at least presumable that this personal interest would color his ideas on this question and prevent that clear and impartial view of it which should fairly measure all interests, public and private, and do justice to all. It may be of interest, therefore, to compare the two plans proposed, and see wherein they differ and what effect the differences must necessarily have upon private and public welfare.

Let it be noticed, first, that the object proposed by each scheme is precisely identical, namely, the union of all the railways of the United States in one organization. As stated in an able editorial in the *Railway Review* for August 22, 1891, "Mr. Huntington, as an investor and railroad manager, naturally writes from his standpoint, and it is interesting to find that in the working out of his own interest he has arrived at prac-

tically the same conclusion as has Mr. Lewis from a public standpoint, and on economic lines. It is just possible that in this is found a hint that such a solution of the problem would best conserve all interests."

Mr. Huntington says, in reply to a question as to the remedy for rate-wars and rate-cutting, with all their attendant evils: "I know of but one answer. The ablest men have come to the conclusion that the most effective and probably the only practical remedy for the many evils and demoralizations that now exist is joint ownership, thus creating harmony out of discord, and order out of confusion, and largely increasing the value of the property of the stockholders of each road, each of whom then becomes a stockholder in the whole property."

Further he says: "What is wanted is not more than two or three great carrying companies, and one would be better. I am satisfied that the best results will not be reached until substantially all the transportation business of this country is done by one company." This position is well taken. Little would be gained by creating two or three great companies. It would be difficult indeed to so divide the territory and business as that conflicts would not arise between these business giants. And struggles between such antagonists would be disastrous both to stockholders and to the public in proportion to the magnitude of the contestants. Mr. Huntington undoubtedly foresaw this, and therefore expressed his preference for one company.

But the writer insists that the remedy to be effective must be radical and thorough. Other remedies, such as the Interstate Commerce Law, State commissions or statutes, or passenger or freight associations, or com-

mittees of gentlemen, treat and affect symptoms only and not the disease itself. This can be cured only by removing the causes which create it. At present railroading is unsatisfactory to the investing public who own the roads and to the entire public who use them. The return from railroad investments in much the largest proportion of roads is too small, and especially too uncertain and fluctuating, to be satisfactory to investors. And, on the other hand, the rates of transportation are too high to meet the necessities of the public, and by reason of discriminations and rate-wars, these charges are so fluctuating as to constitute a seriously disturbing element in all business. It may at first sight seem like a contradiction to assert that charges for railroad services are too high and yet the return to the investor is too low. But this is a contradiction in appearance only. I will in this place merely call to mind the effect which the immense issues of watered stock have in reducing the income to the investor and increasing the rate to the shipper.* This is an exceedingly important element, but it is small compared to the vast friction and waste under the present system. In the struggle of competing lines to gain business, agencies and plants of all kinds are multiplied where less of either would accomplish the same result. Moreover, great quantities of freight are transported over longer and harder roads at an actual loss which could be carried by the shorter lines at a fair profit. If all lines had a common interest, all of this waste and unnecessary expense could be saved, and no temptation would exist to haul freight over a long line when it

* See Chapter v. for a discussion of the effect of excessive capitalization on railroad rates.

could go over another line perhaps one third as long and of easier grades. Each line would then carry what it could haul naturally and economically. The fundamental error and vice of our present system is private ownership in independent and competing roads. This is the root and underlying cause of all our railroad maladies, and no plan or system which does not remove this cause will be entirely effective or long satisfactory.

This suggests the absolutely divergent and antagonistic principles on which the two plans are based. The principle logically underlying Mr. Huntington's entire article is that railroading is, or ought to be, merely a private business, like manufacturing or merchandising, and should not be "restricted by legislation." That therefore railroad rates are merely charges for services performed which, as in other cases, the party for whom they are done could accept or refuse as he might choose.

The contention of the writer is that railroading is not of right a private money-making business, but the exercise of functions belonging properly to the whole people represented by the government. Under this view railroad rates become a species of taxation levied under authority of the State to pay the agents to whom it has delegated a portion of its own powers and resultant duties. It may be claimed that the shipper or passenger can refuse to use the railroad if not satisfied with its rates. But this is not true. Under the conditions of modern civilization transportation by railroad is a necessity as much as food or raiment. Indeed, it is in effect food and clothing. The farmer or manufacturer must use the railroad, or neither could continue to raise grain or make goods. To large sections of

our land food must be brought by rail or starvation would ensue.

Since Mr. Huntington and the writer both advocate consolidation into one company, it will be seen that economy of administration and curtailment of waste would result from either plan. But in case of consolidation into one company under private control exclusively, for whose benefit would this saving be made? Would it contribute to the enormous enrichment of the stockholders, or would the company, having an absolute monopoly of all transportation by rail, voluntarily reduce its rates so as to pay only a moderate compensation to its stockholders? This would certainly be contrary to ordinary experience and common principles of human action. The public would undoubtedly gain the advantage of steadiness in rates, but would they be steadily higher or lower? Mr. Huntington says that "quite as much good will be the outcome" to the people as to the roads, by such consolidation. But how is it certain that this will occur? Again, he says: "The accomplishment of this [consolidation] would reduce the cost of transportation to the minimum, which would admit of the lowest possible rates to shippers and passengers."

It would also admit of the highest possible profit to the stockholders and managers, and the power to determine which of these policies should be adopted would rest wholly with the company, or, more properly, with the managers. In any event, every sentiment of ambition or greed, and the overwhelming pressure of the vast capital of the company, would be opposed to any adequate reduction. An occasional small decrease might be made to quiet public clamor, but it may

safely be asserted that every possible device for obtaining and retaining enormous profits would be resorted to. All past experience and every principle of human nature sustain this assertion.

It is true, Mr. Huntington says: "When a fair return upon invested capital has been received, the people through the courts can prevent rates from going up, and thus restrict the earnings of a railroad to reasonable figures." This is accompanied by a glowing compliment to the judiciary department of the government, and altogether constitutes a fine piece of humor. One can easily fancy the gentleman with his large experience in that direction laughing in his sleeve as he writes.

But, treating it seriously, what shall be the standard of a "fair return" upon the capital; and in case of an excessive profit, what private citizen would dare to oppose such a mighty antagonist, or bring a legal action against it?

An illustration from past experience may throw light on this point. The charter of the New York & New Haven Railroad provided that the stock should not receive returns in excess of ten per cent. per annum. I believe even Mr. Huntington would concede that this is high enough to constitute a "fair return." But it is notorious that for many years this road has paid, directly or indirectly, much more than ten per cent. per annum. Extensive and expensive improvements have been made out of the earnings, that is, at the expense of the public, thus enhancing the value of the stock. Watered stock has been issued and other roads purchased, and by every conceivable device the spirit and intent of the law have been evaded. Meanwhile

the road has enjoyed substantially a monopoly of the vast traffic and travel on this great route between New York and eastern and southern New England. If the courts have been unable to control this corporation when the rate of return upon the capital invested was expressed in the very organic act creating it, how would it be possible for any court anywhere to control the mighty power of such a consolidation as is proposed by Mr. Huntington, with no original limitation of profit?

In the plan suggested by the writer the interest or dividend on the stock of the proposed consolidated company is limited to three per cent. per annum, which, however, is to be guaranteed by the United States, thus constituting an absolutely safe and fixed investment. No intimation is given as to what rate would be considered a fair return by Mr. Huntington; but assuming that six per cent. would be such a rate, then the charge to the public would be doubled and nearly $350,000,000 per year more be taken from the public for the enrichment of a comparatively small number. This would add one more to the various methods of indirect taxation which for years have drawn small sums steadily from the income of every individual and concentrated it in the hands of a few. A few men in half a lifetime have amassed fortunes of fifty millions or one hundred millions or more. The possibility that such a thing could be true is at once the clearest proof of the terrible injustice of our present economic system and its most scathing condemnation.

The formation of such a vast company under private control only would afford unlimited temptation and opportunity for unscrupulous stock-jobbers and specu-

lators to acquire the controlling and ultimately the main, if not the exclusive, ownership of the stock.

We have shown that even if the stockholders of the company proposed by Mr. Huntington should be satisfied with dividends of six per cent. per annum, the charge upon the public would be about $350,000,000 more than under the plan proposed by the writer. But is there any reason to suppose that they would be satisfied with even this limitation? The experience of the past shows that railroad corporations have never been satisfied with any legal limitation made on their profits, but by issuing watered stock and by other devices they have evaded the law and drawn from the public as great profits as possible. So long as the idea of *profit* is claimed to be a legitimate factor in railroading, just so long it may be taken for granted that all the money possible would be drawn from the public for the benefit of the great consolidated company. This marks another fundamental and vital distinction between the principles upon which the two plans under consideration are based. Mr. Huntington assumes that railroading is private business, and like other private business its owners and managers have a right to all the profit they can make. The writer denounces and emphatically repudiates this view. The right to charge for railroad transportation can be sustained in principle only on the ground that these charges are of the nature of taxation, and not on the ground of mere compensation for services performed at the request of the shipper or passenger. If this principle or any modification of it is sound, then the idea of profit in connection with such services is as absolutely illogical and absurd as it would be in levying taxes for

the general government. The fundamental ideas of profit and taxation are world-wide apart; they have nothing in common, and cannot coexist in the same enterprise. If railroading is a private business, then every one has a right to enter into it, and every citizen has the same right to grants of land or bonds or other subsidies as has any other citizen or body of citizens. Those railroad men who claim that railroading is a private business, and at the same time complain of the public for chartering railroads and so creating competition, occupy a most untenable ground.

The formation of a consolidated company combining all the railroads of the United States in one great aggregation, would constitute the most tremendous financial organization the world has ever witnessed. Its power would be almost unlimited. It might, if wrongfully used, control all the departments of the government, State and national, executive, legislative, and judicial. It would have the business and fortunes of every man and the whole nation in its hands. Any private citizen attempting to raise his hand against possible injustice on its part would be crushed as an elephant would crush an ant in its path, and with as little consideration. No power, State or national, could stand against it. Its treasury and its income would be vaster than that of the nation, and if under private control merely, a few men would be the uncontrolled rulers of the land. This would be a despotism worse than that of Russia, which has been said to be tempered by assassination, for the social customs of America do not permit of this form of amelioration. A more dangerous and fearful peril than this might prove to be cannot be conceived. But Mr. Hunting-

ton assumes that this great aggregation would be as timid and gentle as a cooing dove. Is there anything in past experience of States where great railway magnates have had control to throw light on this subject? A few years ago the people of California, after having experienced what seemed to them unendurable hardships at the hands of the railways, stung to action by railroad extortion, rose in revolt and enacted a new constitution, and attempted to throw off the yoke of their masters. Possibly Mr. Huntington may remember this. But even this protest of an entire State did not accomplish the purpose. The Southern Pacific Railroad has been, and still is, practically the ruler of California. A little more than a year ago a desperate effort was made in that State to put an end to the corruption in city and State government, and a great meeting was held in San Francisco to help forward this movement, in which the interference of the Southern Pacific Railroad in politics was bitterly denounced. In spite of this public manifestation, the wishes of the road were observed in the election of judges, and the judge who was prominent in efforts to restrain and prevent this corrupt and illegal interference with city and State politics was set aside. This is a sufficient comment on the eulogy falling from the pen of Mr. Huntington in honor of the judicial department of the country.

One of the leading editors and most prominent public men of Nebraska recently, in a vigorous article, charged that the Union Pacific Railroad has for years dominated the politics and interfered with all the elections in the great State of Nebraska, advancing men to office who could be relied on as its tools, and retir-

ing any one who dared to oppose its wishes. Any one familiar with the interior of politics in the State of Iowa knows that that State has been substantially controlled for a generation by a railroad ring.

Under the plan proposed by the writer, it is not denied that the power of the organization would be just as overwhelming as under the plan proposed by Mr. Huntington. The power would be equal in both cases. The material question is, What would be the tendency under the plan of the writer, and what the probability of its unjust or oppressive use? In the first place, the absolute limitation of the rate of dividend to three per cent., and its guaranty by the United States, would place the stock in the list of most desirable securities for the permanent investment of funds held by savings-banks or trustees or insurance companies, and remove it from the list of stocks sought for speculative purposes or for great returns. This of itself would place the control of the company, so far as its private directors are concerned, in the hands of a great body of honorable, conservative citizens, whose only desire would be for the general good. The limitation of the voting power of any one individual or institution to $10,000,000 would aid in the wide distribution of the stock and prevent the election of private directors passing into the hands of a few individuals or corporations. The absolute elimination of the entire idea of profit in the operations of the railway system would take away the temptation to rich men to get possession and control of the system. The relief to shipping interests possible under this plan would cause them to watch jealously any misuse of the power of the organization, and aid in securing the election of

upright men to the public directory. The fact that the organic principle upon which this plan is based recognizes as the very essence of its being that the corporation is public in its character and subject to the public, would go far to prevent any possible attempt on the part of the management to override the government, either State or national. In the plan proposed by Mr. Huntington it would be suicidal for a private citizen, however just his cause, to engage in a legal contest with such a vast corporation. It would be his financial and political ruin. On the other hand, as an organic part of the plan proposed by the writer, it becomes the duty of the United States courts to take up the cause of any citizen unjustly treated by the consolidated company, and thus the power of the nation is pledged to secure justice to every citizen as against his powerful adversary. Since the plan combines both State and national authority in the board of directors with private citizens chosen by the real owners of the road, all interests are represented, and a management assured which would be both economical and conservative of all interests.

Under the present system of railroading, as under the plan proposed by Mr. Huntington, the demand for as large interest as possible on bonds, and as large dividends as possible on stock, impels railroad managers to keep up rates and keep down wages and other expenses, until the patrons of the road are irritated, and in some cases actually oppressed, creating ill feeling against the roads on the part of their supporters; while employees are antagonized, and even made hostile, resulting in strikes and other labor disturbances destructive of private property and public inter-

ests. Under the plan proposed by the writer, with fixed charges at the very lowest rate, and all incidental profit redounding to the benefit of the public, the patrons of railroads would be their friends and supporters, and all classes of employees, feeling that they were performing a public service, would be filled with a new spirit of manhood and dignity, and would perform their duties with a new zeal, not as unto some overbearing and capricious taskmaster, but as a patriotic service to the country. The difference between these two contrasted forms of railway service in effacing the friction and hostility between the public and the employees of the railroads on one side, and the roads themselves on the other, is almost incalculable, and no man could ask or hope to perform a greater service for the nation than he would accomplish who should bring to pass this most auspicious result.

CHAPTER XIV.

GOVERNMENT OWNERSHIP.

Fear that Business Interests would be injured by Incompetent Employees.—Apprehension of Danger from Great Increase of Federal Office-holders.—Such Increase not the only Alternative.—Civil Service Reform and National Consolidation.—Dangerous Influence of Railroads in Politics not obviated by Private Ownership.—Domination of Railroad Rings in Iowa, Nebraska, and Kansas.—Same Influence Powerful in Every State.—Argument of James Peabody, Editor *Railway Review*, against Government Ownership.—Right and Duty of Government to furnish Highways.—Highway the Primary Object.—Common Carrier Secondary.—Purchase with Consent of State not Sole Method of acquiring Real Estate by Federal Government.—May purchase without Consent.—Right of Eminent Domain.—The Paternalism of a Free Government Preferable to the Soullessness of Corporations.—National Consolidation Preferable to Government Ownership.

THE principal and perhaps the strongest objection to absolute ownership by the National Government of the railway system is that it would be perilous to the business interests of the country, and to the liberties of the people as well, to make the vast revenues of that system, and the great multitude of its employees, an object for contention in the political arena, and a reward for partisan victory. On the economic side the fear is twofold: first, as well stated by President Blackstone, the people "cannot trust politicians with the management of railroads under conditions which would require the people to suffer losses resulting from their

mismanagement"; second, the people fear lest in the strife of parties, and the temptation to use this mighty force to aid in carrying out partisan policies, the business interests of the country would be disarranged and thrown into confusion.

On the political side of this question the profound dread is that so immense an addition to the office-holding force of the nation would imperil the liberties of the people, and endanger the perpetuity of free institutions in our land.

The first economic objection assumes that managers of the railroads would be selected for party reasons rather than for business qualifications, which under the present political conditions is probably true.

The second assumes that Congress would necessarily legislate much and badly for the railroads, and the argument is that business should be kept out of politics. If by politics is meant, as is usually the case, the mere theories of ephemeral parties which are made the excuse for the "outs" to try to get in and the "ins" to strive to stay in, this contention may be granted. But if by politics is meant that noblest of all sciences by which nations are built up in all material wealth and in all that constitutes advancement in civilization and enlightenment, then the more the business of the nation can be regulated and controlled by such politics the better for the well-being of the people.

Besides, it must be remembered that a large part of the business of the country is now "in politics" even of the partisan kind. Through the various internal revenue acts the great liquor and tobacco interests have been subject to the action of Congress, and so have been in politics for thirty years. In like manner,

through congressional action respecting the tariff, the great manufacturing and shipping interests of the nation have been subject to the fluctuations of party politics. So, too, all the business of the country and the prosperity of every citizen have been intimately and vitally affected by the changing currents of political opinion on the currency and silver questions. The country has prospered greatly, on the whole, either by reason of, or in spite of, congressional and political action. Whatever may have been the heat and excitement of political canvasses, Congress, when confronted by the weighty responsibility of legislation for all the vast interests of the country, has usually acted cautiously and perhaps as wisely as is possible where no course can be absolutely perfect, and all action must be the result of adjustment of opposing interests, and can be accomplished only by mutual concessions.

It is reasonable to infer that if the great railway system of the country should come under the direct control of Congress, it would manifest the same conservatism as in dealing with other great interests. Indeed, it is not a matter of inference. Congress has already legislated on this subject, and its careful and cautious course in the consideration and ultimate passage of the Act to Regulate Commerce indicates what its action would be upon a question of such tremendous importance. I believe that Congress would rise to the measure of its responsibilities in so great a matter, and that this objection is not of serious importance.

On the political side, the danger is more obvious and far more grave, under present political conditions. The objection assumes that all the vast number of railroad employees would be added to the present

army of government office-holders, and all would be subject to political decapitation at the hands of each new political "General" who might hold the office of chief axman to a new administration. If this were the only course to be pursued as the result of government ownership, such ownership would be forever impossible. The disasters to the railroad service from such wholesale changes, and from the appointment of employees of all grades of service as a reward for political opinions or party service, would be appalling, and the peril to free institutions from so vast a bribe for partisan success, or so tremendous an opportunity and temptation to the retention of power when once it should be gained, would be most portentous. The number of railway employees for the year ending June 3, 1891, as shown by the report of the statistician of the Interstate Commerce Commission, is 784,285. The danger above referred to has been pointed out clearly and forcibly by the Washington correspondent of that able and influential paper the Springfield *Republican*. In an article in that paper, under date of January 7, 1893, after referring to the vast number of railway employees, he says: "These numbers ought to be conclusive against the socialistic argument in favor of government ownership of the railways. The present number of federal employees is about 185,000, and the addition of the railway force would increase the number to nearly a million. A million federal employees would be one twelfth of the voting strength of the country, and would be too heavy a weight to be safely thrown into the scale in favor of the dominant party in a presidential election. Prof. Paul Leroy Beaulieu, the great French economist, declares that

when the number of employees of the State exceeds five or six per cent. of the electoral body, political liberty is greatly compromised; and that when the functionaries of the State form ten per cent. of the number of voters, political liberty ceases to exist. The number of federal officials in the United States would exceed eight per cent. of the voters under government control of the railroads, even if federal control meant no increase of force." If the only course possible were to make so vast an addition to the office-holding numbers, all subject to change with political changes, or, what is far more dangerous, all interested in keeping the dominant party and its whilom chief in power indefinitely, these numbers would indeed make an end of all thought of governmental ownership. But, fortunately, this, which is usually put as the only alternative for the present system, is by no means the sole alternative. In the first place, it may be reasonably hoped that as political intelligence increases among the people, the thought of divorcing the merely ministerial offices from political changes, embodied in the Civil Service Act, will more and more prevail until the greatest proportion of federal offices will be bestowed on business principles, and as a reward for intelligence and efficiency, instead of a compensation for party or personal fealty. If every Chief Executive of the nation would rise to the greatness of his position, and be in fact President of the United States, instead of merely the successful chief of the victorious party in the latest election, this reform would make sure and rapid progress.

The present incumbent of that high office, President Cleveland, has frequently expressed his cordial sym-

pathy with this reform, and manifested his sincerity by courageous action. That he did not wholly succeed in his struggle with the place-hunters in his first administration is rather a matter of profound regret for the statesman and patriot, than of criticism of President Cleveland. The Civil Service Reform is sure to gain strength, and if so great an increase of the office-holding force should be imminent, it would command the assent of all intelligent men. But this perilous increase of office-holders under the Federal Government is not desirable and is not necessary. Under the plan of national consolidation, outlined in prior chapters, no increase of federal office-holders is made except the president of the consolidated company and six commissioners, seven in all, and these must be divided between the two leading parties.

Moreover, the commissioners to be selected by the several States would necessarily be of different political faiths, and the commissioners representing the owners of the stock would unquestionably belong to opposite political parties, and would be more interested in the financial success of the company than in obtaining offices for political adherents. Besides all this, the requirement is made that all employees shall be selected on account of fitness for their respective places, and not for political reasons, and shall be retained during good behavior, unless discharged for unfitness or criminal conduct. And in their original appointment it is also specified that appointments shall be made, as far as practicable, in equal numbers between the two principal parties. It will thus be seen that every practical device is adopted to render the great consolidated company a business corporation, instead of a political

machine. The effort is made to remove the temptation from all the prominent officers of using the great power of this company for their political advancement, by rendering them absolutely ineligible to any political office so long as they are officers of the consolidated company, and for two years thereafter. The term of office of the president of the company is made nine years, and he is made ineligible to reëlection. An organization is thus created, which is separated as completely as possible from all party influences, and is based upon purely economic principles. Under this organization each employee, however humble, can feel entire independence in exercising every political right which it is the privilege of an American citizen to enjoy, without fear that his livelihood and the support of his family will be imperiled by acting in opposition to the political views or opinions of some superior officer. This organization would completely separate the railway system from the vicissitudes of politics, and place it upon a firm basis. It would be no longer one of the most disturbing and dangerous elements of our national life, but by its uniform and regular operations would serve all the business interests of the country with economy, and upon equal and just terms.

The control of this great organization would in fact be in the hands of the people of the United States instead of simply the politicians or party managers. It would be the servant of the people ministering to the general prosperity. On account of the reduction in the rates of transportation possible through the low rates of interest and the entire absence of the element of profit, it would benefit all the people.

It will be remembered that another plan proposed

by Mr. C. P. Huntington is that the railway system be consolidated into one great corporation under private control.

As has been stated, the principal and strongest objection to governmental control of the railroads is that too great power could be used in our politics. What shall we say, then, as to the danger arising from the concentration of the vast railroad interests of the United States in the hands of a few men, who could use all its tremendous power in politics or business as they may choose for personal or party aggrandizement? The objection to *governmental* control on the ground of danger in our political affairs is not obviated by permitting this control to be left in the hands of a few private citizens. In fact, carefully analyzed, the objection will be seen to be based on the power which so vast an aggregate of wealth in one line of business, capable of being so easily controlled toward one object, inevitably creates.

No more vivid and striking illustration of the influence which railroads now exert on our political affairs could be given than the presidential conventions of 1888 and 1892 afford. It would be difficult to say in which party railroad influence was most potent.

In the Democratic convention at St. Louis some of the leading railroad men of the country were active and prominent managers.

But the Republican convention at Chicago showed more clearly the dominating influence of the great railroads. The temporary chairman was the attorney and active political manager of the Union Pacific Railroad. A prominent railroad attorney of California was made permanent chairman. The president of the New York

Central Railroad was a leading candidate for President of the United States, and when defeated practically dictated who the nominee for that great office should be.

Here we see railroad influences so powerful as to name the temporary and permanent chairman of the convention, and the nominee of the party for President.

The Republican party had been accused before the Chicago meeting of being unduly friendly to these great corporations, and it would have been good politics at least to have avoided the appearance of truth in these accusations. But the course of the convention was such as to seem to corroborate these assertions. It was a great mistake, which has already cost the party dearly, and is likely to do still further injury.*

In the conventions of the two parties held at Minneapolis and Chicago in 1892, railway power was not less conspicuous and dominant, and, as before, especially in the Republican party. The convention itself and the lobby abounded in railroad officials or attorneys and editors who were under the control of railroad influences. It would be difficult to see how the railroads could have a greater influence in political caucuses and conventions, if they were owned entirely by the government and their offices were made openly the spoils of political mastery, than they exercised in these new conventions of 1892.

It is not generally known outside of railroad circles, but it is true nevertheless, that there is in existence a society composed of prominent railway officials and

* These words were written in 1891. The results of the election of 1892 are a sufficient corroboration of their truthfulness.

the more important railroad employees throughout the country, especially in the West, which society has for its object the control of political movements of any shade of politics, its purpose being to elect such men as will be amenable to railroad influences, whatever political faith the proposed candidates may profess. This society has its members in all branches of the railroad service, and all are pledged to the one purpose of advancing railroad influence through whatever party and by whatever person it can best be controlled. The members of this society are active in all political caucuses and conventions, and seek by all means in their power to elect such candidates for the various legislatures or for other important offices as can be relied upon to serve the interests of the railroads at any cost. This society has for its motto in fact, though perhaps not in name, the famous declaration of the late Jay Gould, who, if not the originator of the society, certainly deserves to be considered its patron saint. He is said to have declared, "With a Democrat I am a Democrat, with a Republican I am a Republican, but at all times I am for the Erie Railroad." This simple but expressive political creed seems to comprehend the entire political faith of this association. A more dangerous organization for the welfare and prosperity of the people generally than this would be, in case of large increase in the consolidation of railroads under private control, cannot be conceived. Such a society universally diffused in the railway service would number its adherents by hundreds of thousands, and would control all legislation, and make or unmake all parties until its influence should be fully understood. Then a popular revolt against it and its master, the railroads,

would occur, which, like many other popular movements, would be likely to go to excess in its destructive reforms.

The right is fully conceded to railroad owners or officials, or to men in the employ of the railroads, to form a political party whose open and avowed purpose shall be to advance the interests of the railroads by any legislation deemed wise and best for them, or by the repeal of any laws affecting the railroads now on the statute books. They have the same right to make this a political issue that the Grangers or the People's Party have to make government ownership, or any form of governmental control of the railroads, a political issue. It is altogether probable that political parties in the near future will be divided largely on this issue. But this society is a secret organization, concealing its existence as far as possible, and its purposes, and acting by striking down in the dark any candidate who for any reason, however creditable to him, may have incurred the enmity of the leaders of this organization, who are usually prominent railroad officials or attorneys. In the past such associations have acted only for evil. They have required secret assent to propositions acceptable to them from candidates for public office, and have relentlessly stricken down candidates, however worthy, who were unwilling to make such secret compacts. Such action tends to destroy all honesty and integrity in public office, and to replace honorable and upright men by unscrupulous and ambitious politicians, who are willing to assent to such secret compacts, by which they are made merely the tools of an organization, while professing to act as the officers and agents of the entire people. This course

of action has been largely used in the selection of members of the legislature or of railroad commissioners; but it has not been confined to those officers, and it is just as applicable to the nomination and election of judges of the various courts, including the Supreme Court of any State, as to subordinate officers. Nothing more thoroughly hostile to the spirit of American free institutions can possibly be conceived than such a society as this is in theory, and as it has proved itself to be in practice.

Reference has been made in a former chapter to the domination of a railroad ring in the politics of Iowa. This dominance has extended to all grades and classes of officers. An able and upright judge of the Supreme Court of Iowa some years ago was a candidate for reelection. It chanced that he had incurred the enmity of the railroad ring. In common with the majority of the court he had become obnoxious also to the temperance sentiment of the State on account of a decision of the court on that subject. Whether the decision was sound or not is not now in issue. It has always seemed to the writer that the court floundered in a bog of legal technicalities, instead of sweeping resistlessly along the deep current of legal principles. But be this as it may, railroad lobbyists of all political parties were busily at work to defeat him, and the animosity of temperance men was adroitly and successfully used to effect the ends of the railroad attorneys. At the next election a colleague, who had concurred in the decision, and was in all respects as blamable as the defeated judge, if either was blamable, was a candidate for reelection and was elected. The railroad ring was favorable to him, and the hostile temperance sentiment was

shrewdly soothed to sleep by the plea that it would weaken the independence of the bench if a judge should be opposed and defeated on account of his judicial decisions. The railroads have fought bitterly the legislation of the State of Iowa creating a State Commission. They have misrepresented the effect of this law, and have assailed its legality. Being defeated in this, they have endeavored to capture the commission. Whenever a commissioner has held that office long enough to become familiar with the complexities of the position, or has shown independence of railroad influence, and a desire to have the people of the State fairly protected in accordance with the spirit of the act, he has been assailed by all the forces at the command of the railroads, and, if possible, beaten in the caucus nominations or defeated at the polls. The Hon. Frank T. Campbell, an able and just commissioner, was suspected of Granger sentiments, but was too strong to be beaten in the Republican convention, in which he was unanimously renominated. This, however, did not discourage his opponents, who turned against him at the polls, and he was defeated in the election. At the last election Hon. Spencer Smith was a candidate for renomination in the Republican convention. He also had been thought to be too favorable to the interests of the people. He was a lawyer by profession, and editor of one of the leading papers of the State, which had always been loyal to the Republican cause, though not inclined to submit to the dictation of the ring in all matters. Mr. Smith is a man of integrity and ability, but in addition to the spirit of independence, repugnant to the railroad ring, he added the further unpardonable offense of being

familiar with modern philosophic thought respecting the relations of the railroads to the public, and the rights of the people with respect to these public conveniences.

He had even been known to read the writings of such economists as Prof. F. W. Taussig, of Harvard University, and other thinkers of equal rank. It is not asserted that he agreed with these men, who are called theoretical reformers. But that he was familiar with that class of literature was a sufficient condemnation. In the Republican convention he was assailed by every influence which the railroads could bring to bear against him. By secret manipulation the delegation from his own county was packed with railroad men, and in the convention at least forty railroad attorneys and lobbyists of one class and another were busily at work to defeat him. Of course he was not renominated. One argument was adroitly and persistently used against him, namely, that the farmers should be represented on the board of commissioners. This certainly was very plausible, and this, with other arguments, accomplished his defeat. A man was nominated for the position, as a Granger candidate, who is very much such a farmer as Chauncey M. Depew or Archibald McLeod, though not of quite so high rank as these eminent agriculturists.

I do not deny the right of men engaged in railroad employments to exercise political rights equally with men in any other employment. So long as these rights are exercised honorably and legitimately no one has any right or should have any desire to complain. But if money is used to influence elections, or if passes are given as bribes for votes, or if other illegitimate influences of any kind are used by railroads, they are wrong

and dangerous to free institutions. And no other business or occupation, unless it be the liquor interest, compares with the railroad system in the extent to which it uses wrongful means to influence elections, to control legislatures, to capture railroad commissions, or to manipulate Supreme Courts. It is this which constitutes the railroad system so dangerous a foe to the purity of our elections and the integrity and stability of our political institutions. And in reply to the point made against government ownership, that the railroad system would exercise too great an influence in our politics, I answer that the railroads now exercise a most dangerous and often corrupt influence in our politics, both State and national.*

Prof. Arthur T. Hadley, in an article in the *Atlantic Monthly* for March, 1891, referring to railway man-

* Since the above was written an article has appeared in the *North American Review* of May, 1893, from the editor of the *Railway Age*, entitled "A Railway Party in Politics," giving, so far as I am aware, the first published announcement of the existence of the society referred to above. The writer of that article says: "The movement originated with the employees, men from the shops and the yards, and has been managed by them." If the movement originated with the employees, it is certain that it received strong support from the chief officials of many of the leading Western roads. Some of them believe in "fighting fire with fire," as they expressed it, while others, more cautious or more sound, as stated in the article referred to, regard the movement with profound distrust. It is a fact, however, that on the Saturday and Sunday nights preceding the Tuesday on which the election occurred, telegrams were sent out from Chicago through the regular railroad operators on all the principal lines in Iowa, instructing the members of the Railway Employees' Club, and all other persons whom they could influence, to vote against Hon. F. T. Campbell, the Republican candidate for renomination as railway commissioner. It is also a fact that the

agers noted more for unscrupulous vigor than for tact, says: "Such leaders have known little of the feeling among the employees of the road, and have had little of the instinct of leadership which would cultivate *esprit de corps* or prevent disaffection and strikes.

"They have known to some extent how to deal with corrupt legislators; they have not known how to deal with public opinion along the line, uncorrupt and unenlightened, which renders the actions of such legislators dangerous."

These words of Professor Hadley suggest two of the most threatening evils to the peace of society: first, the hostility between the employees and the owners or managers of the roads; and second, the corrupting influence often exerted by railroad power or money on governmental action. Legislators elected by the people to carry out certain purposes have been by some secret and mysterious influence shorn of all qualities dangerous to railroad schemes, and the wishes of the people have been thwarted.

Grand Council, so called, of this association, shortly before the election submitted a proposition to Mr. Campbell, that if he would agree to increase the rates on certain classes of freight, and in general would favor railroad interests while acting as commissioner, the Association would support him in the coming election. Greatly to his credit, Mr. Campbell positively refused to submit to the dictation of this organization, and, as they threatened to do in the interview, they turned against him at the polls. Mr. Campbell was too strong to be defeated in the Republican convention, and so he was secretly knifed in the election through orders emanating from Chicago to railroad employees. But in the next election for railway commissioner, the tactics of the railroad ring, which is behind this association, were changed, and by secretly packing the caucuses, Mr. Smith was defeated in the nominating convention.

Possibly one or two illustrations of railroad action which have come to the notice of the writer may explain why legislators who, in the canvass preceding their election, expressed such profound devotion to the cause of the people, and favored special measures desired for their relief, have failed to accomplish these purposes, and through some strange mesmeric influence have been unable to carry out, as members of the legislature, the high intentions of their political professions.

When the legislature of a certain western State was in session, an important railroad bill was referred to an appropriate committee. The chairman of the committee telegraphed to the president of a leading road at its headquarters in Chicago, conveying the information that the bill had been referred to his committee, with the further suggestion that "unless effective measures were immediately taken he was apprehensive of an unfavorable report." The railroad president, reading the telegram, smiled suggestively, took down a small book, and under its proper alphabetical entry found a name. Showing the telegram to a friend of the writer, he said, "That means $5000." Thereupon he sent the telegram with a message to the legal department of the road. The writer does not know what occurred after that point, but it is sufficient to say that the committee did not report unfavorably to the railroads on this bill. It was entirely evident to any person witnessing this scene that the railroad official knew precisely with whom he was dealing, and upon what terms the deal could be made. How many more prominent legislators were entered on the list cannot be stated, but, as in the famous list in the "Mikado," it is probable none of them were missed.

A prominent railroad lobbyist, in reply to a suggestion by the writer that he seemed much interested in the action of a certain legislature, said: "Yes, I am interested. I am studying human nature." As I had been credibly informed that this same lobbyist was paid nearly $18,000 by railroad companies for his services in "studying human nature" at a prior session, the humor of this reply was obvious.

Whether the purposes which the people sought to carry out were wise or unwise does not affect the result, which has often been to imbitter public opinion still further. Railroad attorneys complain that they have no chance for fair treatment at the hands of juries; and on the other hand, the people accuse railroad managers of manipulating legislatures, juries, and, so far as possible, all the machinery of government for their own purposes.

I have referred to political conditions in Iowa. They are not markedly different in any State in the northwest, except that in many of the States they are worse than in Iowa. The political condition of Nebraska is well indicated by an article from the Omaha *Bee*, by far the leading Republican paper in the State of Nebraska. Its editor, Mr. E. Rosewater, has been a prominent Republican politician for many years. In the issue of that paper for June 3, 1891, he published a very frank and able letter respecting the political affairs of that State. From this letter I copy some of the most important paragraphs. He says:

"The Republican party has dominated in Nebraska for nearly a quarter of a century. Its electoral vote has been cast for every Republican candidate for President since Ulysses S. Grant was chosen for his first

term. Nebraska gave Harrison 28,000 plurality, and the State might have cast as large a Republican majority in 1890 had the party in the past fulfilled its pledges to the people of this State, and given them satisfactory local government.

"What was the cause of the land-slide last fall? It is known to all Nebraskans that the confederated monopolies have had absolute control of the machinery of the Republican party for more than fifteen years. They packed our primaries and conventions, and dictated our nominees from constable up to governor. No man ambitious to fill a place of honor or trust had any chance of nomination unless he was able to enlist the influence of the railroad managers in his support. In 1888 Nebraska's contingent to the national Republican convention was made up of seven railroad lawyers and three corporation favorites.

"This state of affairs finally culminated in a popular revolt, whose mutterings, loud and deep, made themselves heard soon after the last presidential election. A year ago this very month a conference of earnest Republicans, impressed with the disaster with which the party was menaced, met in conference at the State capital, and passed a series of resolutions setting forth the abuses that were alienating large numbers of Republicans, and appealing to the rank and file to rescue the party from the control of corporate monopoly, and pledge it to the reforms demanded by the producing and industrial classes. Among these resolutions were the following:

"'*Resolved*, That we view with alarm the intense discontent among the Republicans of the State, chiefly due to the vicious and demoralizing interference of

corporations, and their attempts to control all departments of our State government—legislative, executive, and judicial.

"'*Resolved*, That while we desire to accord to railroad corporations their rights and privileges as common carriers, we demand that they shall go out of politics and stop interference with our conventions and legislatures.

"'*Resolved*, That railroad passes distributed in this State for political purposes are a species of bribery pernicious in its influence, and tending to undermine public morals, subversive to a free and unbought expression of the will of the people in their conventions, legislatures, and juries, and we hereby demand the prohibition of passes, and free transportation in any form, under severe penalties.'

"These resolutions were embodied in the Republican State platform. But when the party nominated a railroad politician and money-lender as its standard-bearer, the platform became a mockery. The Republican farmers, who knew the man and his affiliation with the corporations, went over to the Independents almost in a body. The outcome is well known."

As Mr. Rosewater says, the outcome is well known. It was the destruction of the Republican majority in Nebraska, and the turning over of the State to the Democratic party in the election of Governor Boyd. Then, in the fixed determination of the railroad politicians to retain control of the State by fair means or foul, the party was further committed to the unparalleled folly of attempting to defeat the will of the people by unseating the regularly elected governor of the State under a shallow technicality, which the Supreme

Court of the United States trampled upon with as much scorn as the dignity of its exalted position permitted it to show.

In similar manner the Republican masses in Iowa revolted against the railroad management in the Republican convention three years ago, by which Mr. H. C. Wheeler was defeated as Republican candidate for governor. Mr. Wheeler was a worthy candidate, *although* a farmer, and went into the convention with almost a majority of the eleven hundred delegates constituting the assembly. He was fairly entitled to the nomination by all political precedents, but was beaten by the familiar tactics of railroad politicians. As a result Horace Boies was elected governor of the State of Iowa, and was reëlected in the last canvass. This revolt against corporation management had vastly more to do with transforming Iowa to a Democratic State than prohibition or any other single cause, although a loud outcry has been made against prohibition to distract attention from the real cause of Republican defection.

The political condition in Kansas is, if possible, worse than in the other States mentioned. The people of Kansas have passed through a severe financial trial exaggerated by exorbitant local railroad rates. The assertion is made that local rates on many classes of freight are from fifty to eighty-four per cent. in excess of local rates on the same classes of freight in Iowa.

In Kansas also the dissatisfaction of the people with corporation management had much to do with the disastrous overthrow of the Republican party in that State, and the unhappy complications in the last legislature. It would have been wiser for the governor of

Kansas not to have made the remark attributed to him, if indeed he did make it, namely, that "he did not propose to have the Atchison, Topeka & Santa Fé Railroad Company run the State of Kansas." Whether he did in fact make this remark or not, it expressed very tersely a very significant truth.

In every State of the Union railroad influence is powerful, if not dominant, in its politics, and it is doubtful whether, if the government should purchase the railroads, their influence in politics would be any greater than it is now. The concentration of this influence, however, in national politics, with the vast power which so great a number of office-holders would exert in a national canvass, would make this influence exceedingly dangerous.

The *Railway Review* for December 26, 1891, published a comprehensive and very able summary of the principal arguments against government ownership, from the pen of its editor, Mr. James Peabody. This is by far the most terse and vigorous argument against government ownership which I have seen. The *Railway Review* freely welcomes discussion on the subject from every point of view, and has published within two or three years past a number of articles on the general subject of nationalization of the railroads, including several from the pen of the writer of this book, advocating the plan of national consolidation. But the position of the paper itself is expressed in the article referred to. It is, however, in favor of pooling under legal restrictions, and is inclined to view with favor some plan of combination or consolidation to remove the disastrous effect of the present unsettled condition. A large part of the article referred to mil-

itates only against government ownership of the railroads in the proper sense of that term. Other parts of the article bear upon the plan of the writer for national consolidation. Copious quotations are given below.

Par. 1. "A most serious difficulty is found in the constitutional question, which is fundamental to any action of our government. Even if it should be conceded that the United States is entitled, as an ordinary function of its governmental powers, to carry on the business of furnishing transportation (in the absence of any constitutional grant of that nature), a further difficulty remains in the fact that the ownership of railways necessarily involves the ownership of vast amounts of real estate and personal property located in the several States of the Union, which are now subject to the local governments of each State. In order to permit the general government to exercise exclusive jurisdiction over a piece of land on which to build a post-office or a custom-house, concurrent action by the State in which it is located is necessary. Property acquired by the United States without such consent remains subject to the legislative power of the several States, except as it is used by the general government for purposes clearly within the sphere of its constitutional authority. (See Fort Leavenworth Railroad Company *vs.* Lowe, 114 U. S. 525.) It is very questionable whether this constitutional authority can extend to the business of interstate transportation. It is clear that it does not extend to conducting the business of transportation within the limits of the several States, which is a very large part of railway traffic. Legislation by each State would therefore be required in order to enable effective government ownership to be attained, and to permit

the ordinary operations of railways to be carried on. In all probability, also, an amendment of the Constitution of the United States, and of the several constitutions of the individual States, would be necessary. It would be found difficult and almost impossible for any lawyer, accustomed to constitutional questions, to draft a bill for the ownership and management of railways by the government of the United States, until after important changes in the organic law shall have been effected."

Par. 2. "The proposition also involves a practical paternalism which would differ little from despotism. It is proposed to make the general government every man's guardian; to induce it to assume a protection of investors who will accept $4,000,000,000 of securities, and at the same time also of shippers who will furnish the traffic from which the interest charges are to be realized; the interests of every town and city are to be protected; the producer and consumer are to equitably share the burdens of the transportation charge; the interests of competing States and Territories are to be harmonized. Such a stretch of governmental power as this, which visits every man's farm and every woman's tea-table, will hardly be accepted by the citizens of this republic."

Par. 3. "But a more serious difficulty than all the foregoing, and than many others which might be mentioned, is found in the fact that the plan would imply the submission of the control of railway rates to political influences, involving the rivalry of sections, and dependent upon the power of the several States in the National Congress. The whole fabric of railroad rates is one of balances and of territorial adjustments. The

rates charged producers of lumber in Minnesota and Louisiana, of salt in Kansas and Michigan, of sugar in San Francisco and New York; the adjustments between the various markets and gateways through which the great staples of grain and cotton flow; the relations of the great seaboard and interior cities, as between themselves and against each other; with a hundred other like conflicting interests—all are subject to competitive adjustment. If the measure proposed should be attempted, the government would be called upon to determine the relative strength of all the commercial forces of the land in their competition with one another for the markets of this country and of the world. To throw these considerations into the caldron of politics would be suicidal. It may be said that the adjustment of rates could be handled by an impartial commission; but Congress must necessarily either select the commission or prescribe the method of its selection, and the creature cannot be more powerful than the creator. In other words, there is no way in which any given Congress could divest a subsequent Congress of its ability to interfere with railway rates; and when the citizens of any one locality seek a readjustment of rates through political agencies, the floodgate is opened. There would be a system of bargaining and corruption introduced the like of which the world has never seen. Propositions for the building of new roads would be fertile of like consequences."

I have divided the article into paragraphs, and added numbers for convenience of reference in discussing its propositions. The first paragraph raises constitutional questions. So far as the authority of the United States Government to carry on the business of furnish-

ing transportation is concerned, it may be said that this is not the point at issue. The mere furnishing of transportation is a small part of the present duties of the railways. If this were the whole of their duties under our present system, probably no demand would ever be made for government interference, much less for government ownership. If railroads were simply common carriers, and the business were open to every one to engage in, like any other kind of private business, it would be conceded that government ownership would not be desirable. But it will be borne in mind that persons engaged in the business of furnishing transportation—that is to say, common carriers—have for many generations been subject to governmental control. The common law from time immemorial has regulated the simple business of furnishing transportation. It will be conceded at once by every one that it is the duty of the government in all civilized countries to furnish highways. This is one of its most fundamental and imperative obligations. The *highway* is the primary and essential thing. It existed long before any such thing as a common carrier was known, and long before the law of common carriers was formulated, or the business of furnishing transportation had grown into a system. But in the development of modern civilization, the railroads have taken up this most important duty of the government, namely, to furnish highways, and blended with it the minor function of common carriers. The United States has an unquestionable right, both from the law of its own existence as well as from positive constitutional authority, to furnish highways. And it is its duty to do so. If the question be asked whether the National Govern-

ment has the right to construct a railroad deemed necessary by the supreme legislative authority of the nation, and incidentally thereby to furnish transportation, conducted either by itself or by its agents, no constitutional lawyer would hesitate a moment to reply in the affirmative. It not only has this right, but it has been exercising it in the case of at least a dozen roads for the last twenty or thirty years. We have said in a former chapter that Congress has created a large number of railroad corporations authorized to build public highways, and to furnish cars and motive power for carrying on the business of transportation. A part of these roads, possibly every one of them, pass through sovereign States as well as through Territories. It is evident the United States Government could not confer upon the corporations greater authority than the government itself could exercise. The corporations derived all their power, both to build highways and to collect tolls for furnishing transportation, from the sovereign power of the United States. Otherwise they had no power to do either of these acts, either in States or in Territories. It is certain that the creature cannot be greater than its creator. We have seen that in the California cases reported in United States Reports, vol. 127, p. 1, a part of these railroads were expressly stated to be the "instruments and agents of the United States." It is a fundamental legal principle that he who does an act by an agent does it by himself. (*Qui facit per alium, facit per se.*) So, then, both in fact and in law the United States has been engaged in the business of furnishing transportation for nearly thirty years. The constitutionality of the acts of Congress creating these various roads has

been affirmed over and over again by the Supreme Court of the United States. It is true the ownership of personal and real property used by the railroads is in the private individuals constituting the corporation. And so this property is subject to taxation in the same manner as other property in the limits of the various States. But in the California cases it was held that the franchise, which is the soul of the corporation, was the creation of the Federal Government, and was superior to the taxing power of the State.

Mr. Peabody cites the case of Fort Leavenworth Railroad Company against Lowe, 114 U. S. R., 525, as if the decision in this case prevented the United States Government from obtaining jurisdiction over real property in the limits of the States, except by consent of the legislature. If this was his understanding of the case, it is clearly a misapprehension of the scope of the decision. It is true that to acquire *exclusive* jurisdiction over real estate within the limits of a State, consent of the legislature of that State must be obtained. This is in accordance with an express constitutional provision which reads as follows: "Congress shall have power to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." But this relates only to exclusive jurisdiction of every kind, including legislation, punishment for crimes, etc.; and where lands have been purchased within the limits of States with the consent of the legislatures of the States, it has been held that the United States Government took exclusive jurisdiction in every particular, and that the State gov-

ernments had no authority to punish crime committed within the limits of the ceded territory. So where a murder was committed in Fort Adams, in Newport Harbor, R. I., the land upon which the fort was erected having been purchased by the United States with the consent of the legislature of the State of Rhode Island, it was held that the State had no authority to punish the criminal. Also that a prosecution for selling liquors on land in Springfield, Mass., purchased with the consent of that State for the use of the United States, could not be maintained by the State of Massachusetts, although the act was contrary to the statutes of that State.

The opinion in the Fort Leavenworth case shows that this constitutional provision is not the only method by which the United States Government can acquire lands within the States. On page 530 the Court says: "It would seem to have been the opinion of the framers of the Constitution that without the consent of the States the new government would not be able to acquire lands within them. . . . Purchase with such consent was the only mode then thought of for the acquisition by the general government of title to lands in the States. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained nor supposed necessary for the purchase by the general government of lands within the States. If any doubt has ever existed as to its power thus to acquire lands within the States, it has not had sufficient strength to create any effective dissent from the general opinion." So, too, in the same case the Court emphatically affirms the right of the general government to acquire real estate within the

States under the power of eminent domain. Quoting from the case of Kohl against the United States, 91 U. S. 367, in which this doctrine was authoritatively declared, the Court says: "If the right to acquire property for such uses may be made a barren right by the unwillingness of property-holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen."

The second paragraph objects to government ownership on the ground that it would involve practical paternalism differing little from despotism. The word "paternalism" has a great many uses. In one of these uses it is employed as a kind of bogy, to mean some indefinite exercise of governmental power of a little different character, or on a different plane, from its accustomed use, out of which dire results are prophesied to follow. As has been said in a former chapter, worse things can be said of a government than that it is paternal toward those under its authority. This, however, is quite different from despotism. As the intent of this indictment against government ownership contained in paragraph two would militate also against the proposed plan of the writer, I desire to look a little carefully at the meaning and force of this objection. Mr. Peabody says that the general government is to be induced to assume the protection of investors who will accept $4,000,000,000 of securities, and at the same time also of the shippers, who will furnish the traffic from which the interest charges are to be realized. Certainly it would be a desirable thing for in-

vestors holding so vast an amount of securities if they could be made absolutely safe in their investments. It would be a result most desirable of attainment. But the amount of securities referred to, viz., the bonded debts of the railroads, would not be increased by government ownership. If the holders of these securities need protection, who protects them now? How are they protected? Is it not too often such protection as the wolf furnishes to the lamb? The destruction of $34,000,000 in value of Reading securities within one week, which occurred not many months ago, and the downfall of fortunes and the loss of means of support comprised in the $300,000,000 of depreciation in railroad securities in the fall of 1891, do not indicate entire security in these investments at present. It will be remembered that the writer does not favor the direct assumption by the general government of so vast a debt as is represented by the railroad securities, including both stock and bonds. In this he agrees heartily with Mr. Peabody. But it is his contention that this vast volume of securities should not be left, as they now are, to the mercy of stock speculators, or the cupidity and chicanery of railroad directors. The stockholders or bondholders of the railroads have now absolutely no protection. A railroad president interested in depreciating the stock of his own road for the sake of carrying out his private speculations may involve the railroads of a great section in a disastrous rate-war, ruinous to the stock and bond holders, and to the business interests of the country. The president of one of the leading western roads was openly accused of taking this course in a railroad meeting not long ago. It is related of a prominent New York official, who

was interested in a southwestern road which fell into the hands of a manager of this character, that he expressed his views of the management in this manner. Said he to the manager: "Some years ago when you took hold of the road, the road was rich and you were not worth a penny; now I find that you are rich and the road is not worth a penny." Railroad after railroad has been deliberately wrecked for the sake of squeezing out many unfortunate holders of moderate amounts of bonds and stocks, in order that a few great owners might absorb the property for their own enrichment. The present system affords neither stability nor security to the holders of these securities. Governmental ownership, in this respect, would be a vast gain. Nor, on the other hand, are the shippers protected at present. Where there is no competition they are not protected from exorbitant charges. Nor if goods are purchased one day and the regular rate paid for freight, can they be certain that the next day the rate will not be reduced one half or more, sweeping away their profits. If, as Mr. Peabody states, under government ownership, the proposition is that the producer and consumer shall equitably share the burdens of the transportation charge, the proposition, if practicable, is certainly greatly to be desired. It used to be a postulate of political economy that upon the consumer were loaded all burdens subsequent to the production of the articles, and a fair profit thereupon. But experience has long ago demonstrated that this is true only theoretically, and not absolutely. Jones, who "pays the freight," is only a representative of a vast body of producers in a multitude of fields. Many a manufacturer has sold his product at less than cost,

and multitudes of farmers have sold grain and other produce at less than the actual cost of production, without counting a reserve fund to compensate for the elements of fertility subtracted from the soil.

The article further says: "Such a stretch of governmental power as this, which visits every man's farm and every woman's tea-table, will hardly be accepted by the citizens of this republic." But if the government should purchase the roads, all that it would do would be to operate them as far as possible on the lines of the best railroad management at present. The system would not be a new machine with long fingers reaching to every woman's tea-table. It would be just the same as the present system, except for the economy and steadiness due to the harmonious operation of all the roads. If this involves visiting every man's farm and every woman's tea-table, then the present railroad system must do the same. It is perfectly true, as has been shown in former chapters, that the railway system of this country now touches every man's home, and levies a tax on every article of food or clothing, of luxury or art, and on every conceivable commodity which either the living or the dead can use. Which is better, that this visitation should be controlled and its exactions measured by the caprice or cupidity of a few private citizens, or by the representatives of an enlightened and justice-dealing government? There is no possible comparison. The paternalism of a free government is infinitely to be preferred to the fluctuations, the inequalities, and injustice of a hundred railroads governed by private prejudice or corporate soullessness.

A paragraph not quoted argues against government

ownership on account of the enormous indebtedness which must be assumed. In this the writer agrees thoroughly with Mr. Peabody, as former chapters illustrate.

The third paragraph relates to the most difficult practical question in the entire railroad problem, either under private corporations with antagonistic interests, such as the present system is, or under amalgamation of all the present systems into one great corporation under private control, or under the consolidation proposed by the writer. The question of adjustment of rates is most perplexing, and its equitable solution under the present system is absolutely impossible. One of the great difficulties in the matter is the erroneous view prevalent of the proper functions and duties of railways. They should be simply the instruments or servants of the traffic interests, whether passenger or freight, furnishing the easiest facilities possible for the currents of business to flow over, with no artificial obstructions or hindrances. But under present ideas and the present organization they too often seek to control the currents of business, and divert them out of natural channels to the advantage of this or that section or city. This is an entire misuse of the function of a public highway. And under the plan of national consolidation proposed by the writer, all this unnatural effort to be the controller of business, instead of its agent and efficient helper, would be forever ended. All the complexity due to the conflict of private interests in competing roads would be swept away, and the artificial hindrances and obstacles to business due to this element would vanish with it. Rates would be established on scien-

tific principles instead of in the haphazard manner so aptly described by Mr. A. B. Stickney.

The objection is not well taken that in case of government ownership rates could not be made through an impartial commission, because each Congress could undo the work of its predecessor, and so a floodgate of bargaining and corruption would be opened. This would be no more true under government ownership than it is now. An impartial commission was established by the Interstate Commerce Act, and through its agency Congress has been regulating, more or less, all railroad rates throughout the country. No subsequent Congress has repealed this act, or shown the least disposition to do so. On the contrary, amendments adding to its power and usefulness in many directions have been passed. The effort is now making to amend the act so that pooling among competing railroads may be legalized, subject to strict supervision of the commission. I believe Mr. Peabody sympathizes with this movement, and if it were sure that the commission could carefully supervise and thoroughly control such pools, enforcing reasonable reduction of rates when proper, this amendment would be beneficial to the railroads and the business public. But it is far more likely that the railroad pools would override or deceive the commission, and simply add to the burdens of the shipping interests. Whatever the result might be of such an amendment, the significant thing is, that it would confer upon the commission a large power over rates, additional to that which it already possesses. In other words, the government would still further interfere in the regulation of rates without the disastrous results following which Mr. Peabody prophesies.

Under either government ownership or national consolidation, an impartial commission could lay down a few general principles which would be applicable to the vast bulk of all the freight traffic of the country. And the present complexities and absurdities of the customary rate-sheets would be as much out of use as an Egyptian mummy, and as obsolete.

CHAPTER XV.

NATIONAL CONSOLIDATION CONSTITUTIONAL AND PRACTICAL.

Congress has Authority to create a Great National Corporation to carry out any Powers conferred by the Constitution.—This settled by Cases of McCullough *vs.* Maryland and United States Bank *vs.* Osborne under Power to Regulate Currency and followed in National Banking Act.—Under Power to construct Highways and to regulate Commerce, Congress may create a National Railway Corporation either to construct a New Railway System or purchase the Old Systems.—Has already exercised this Power.—Various Pacific Railroads declared to be Agents of the United States.—Federal Government has Right of Eminent Domain superior to the States within its Constitutional Powers.—May exercise this Right within the States.—Question not one of Right but of Expediency and in Discretion of Congress.—No Injustice to Railway Investors.—Property should be taken on Same Principles and Basis of Value as other Private Property, viz., Present Market Value.—Railroad Property from the Beginning subject to Public Control and Use.—Objection that General Government cannot engage in Business of furnishing Transportation Untenable.—It is its Duty to provide Highways and may use them in Manner to which they are best adapted.—This Principle settled Seventy Years Ago in United States Bank *vs.* Osborne.—National Consolidation founded on Union of Representatives of State and National Governments with Private Capital controlling National Railway System.—This Organization Practical and Legal.—No Power or Opportunity to use it in Politics.—Present Railroad Systems may legally be taxed to compel Consolidation.—Board of Commissioners could establish Fundamental Principles of Rates.—Main Complexities of Present Rate-making swept away by Consolidation.

So far in the discussion of the plan of National Consolidation, the writer has referred principally to practical questions and endeavored to show the great advantages sure to follow from consolidation under the plan proposed, or under some other plan similar in its general features. Where legal questions fundamental to the plan have arisen they have been either assumed, or supported by brief citations without full examination. In this chapter I shall attempt to show that the plan in all its essential features is constitutional and is sustained by an overwhelming weight of authority from judicial decisions.

The most important and most fundamental questions are involved in the first section. The section reads as follows:

"SEC. 1. For the purpose of regulating the transportation of persons and merchandise of any description, including express and mail matter, from one State into or through any other State, by means of railways using steam or any other motive power, there is hereby created a railway corporation to be called the 'Consolidated Railway Company of the United States.'"

Many legal questions are suggested by this section. Of course the crucial one is whether Congress has authority to create any corporation, and, if so, whether it may create a railway corporation.

The authority of Congress to create corporations has been too long established to be called in question. In the infancy of our nation, while as yet the men who had created it and given it form and character were at the head of its affairs, while the immortal Washington was President and Jefferson was Secretary of State, and Hamilton Secretary of the Treasury, the question arose

upon Hamilton's proposition to create a national bank. The genius of this great statesman never shone more brilliantly than in his splendid "Opinion on the Constitutionality of a National Bank." The question of the constitutionality of this bank necessarily involved the power of Congress under the Constitution to create any corporation, this power not being expressly given. Jefferson, Randolph, and Madison opposed it. Hamilton based his opinion upon the proposition that the creation of corporations is an incident of sovereign power inherent in its nature, and that the creation of corporations not being prohibited by the Constitution and being a fit and proper means for carrying out purposes therein expressed, it was clearly within the constitutional power of Congress to create corporations. He sustained these positions with a clearness and power of reasoning which overmastered his opponents and secured the approval of Washington in spite of the opposition of Jefferson and Randolph in his cabinet. This view was afterward concurred in by Jefferson and Madison. It was adopted by the Supreme Court of the United States in McCullough *vs.* State of Maryland, after a full argument in which Webster and Pinckney took part.

The question at issue in this case was the right of the State of Maryland to tax a branch of the Bank of the United States, but the determination of this question necessarily involved the right of Congress to create that bank. In a powerful opinion written by the great jurist Chief-Justice Marshall, this power of Congress was most clearly and ably vindicated and established. He said:* "Although, among the enumerated powers

* 4 Wheaton, pp. 407 and 411.

of government, we do not find the word 'bank,' or 'incorporation,' we find the great powers to lay and collect taxes, to borrow money, to regulate commerce, to declare and conduct a war, and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are intrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance merely because they are inferior. Such an idea can never be advanced. But it may, with great reason, be contended that a government intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depend, must also be intrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. . . . The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. . . . No sufficient reason is, therefore, perceived why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them." This decision was rendered at the February term, 1819. Five years later the same question was before the court in the case of Osborne *vs.* the United States Bank, involving the right of the State of Ohio to tax a branch of that bank. The constitutionality of the action of Congress in incorporating the

bank was after full argument given mature consideration by the court, and the former decision was emphatically reaffirmed.* The power of Congress to create corporations has never been seriously questioned since that time.

It may be said that this only related to the power to create financial corporations, a power which was unhesitatingly employed by Congress in enacting the National Banking Act. But this is not correct. The fundamental question determined by the Supreme Court in McCullough *vs.* Maryland was that Congress had power under the Constitution to create corporations. This was determined under a provision of the Constitution which, so far as it relates to this subject, reads, "Congress shall have power . . . to coin money, regulate the value thereof and of foreign coin."

This certainly is no more positive than the provision relating to interstate commerce. Indeed it is not so clear and strong as that provision. This reads, "Congress shall have power . . . to regulate commerce . . . among the several States." The force and scope of this provision will be considered later. The point I now make is that if, under the provision first cited, Congress had power to create a corporation, much more under the second provision would it have such authority. As is stated in McCullough *vs.* Maryland, the power to create a corporation "is never the end for which other powers are exercised, but a means by which other objects are accomplished. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with

* 9 Wheaton, p. 738 (see p. 759).

the letter and spirit of the Constitution, are constitutional."

These decisions have remained the unquestioned law of the nation for two generations. Under these decisions it is clear that Congress has authority to create a great national corporation to carry out any powers given by the Constitution to the Federal Government. The only remaining question relates to the expediency and wisdom of such a national corporation to accomplish any ends within the scope of the powers conferred upon the general government. This question is addressed to the discretion of Congress and not to its authority. The authority is complete and ample under the provisions of the Constitution and the decisions of the Supreme Court. It may be objected that a financial corporation and a railway corporation are different in character, and while a national bank might be within the scope of the constitutional powers of Congress, a national railway corporation might not be. A sufficient reply to this would be that Congress is given unlimited power to regulate commerce among the several States. This power is certainly as full and explicit as that to regulate the currency. It was given to accomplish great national purposes, and it is well known that the regulation of commerce among the several States was one of the principal causes, perhaps the chief reason, for the formation of the present Constitution. It is true that the commerce which gave the greatest annoyance and occasioned the most serious problems to the weak Confederation in existence before the Constitution was adopted, was carried on almost entirely by water. But that carried on by land between the several States was of sufficient importance

to engage the attention of the framers of the Constitution and to be included in the scope of the provision relating to the regulation of commerce between the States. Since that time the commercial intercourse carried on by land, through the agency principally of the railroads, has enormously increased, and has become perhaps the most important branch of commerce. The Constitution was itself a new instrument adapted to the commercial conditions which had come into being before it was adopted. It has the quality and power of adaptation to the new conditions now existing. The form of the carrier which now effects the interchange of commodities has been modified, but the principles imbedded in the Constitution are just as applicable to the new instruments of commerce as to those which were comparatively new when the Constitution was framed.

But an answer to the above objection does not need to rest upon argument or inference from the constitutional provision above cited. Congress has in a large number of instances unhesitatingly employed its power to create railway corporations as public highways, subject to the control of the government in important particulars, and the Supreme Court, as we have shown, has declared these to be the agents of the United States Government. In the California cases referred to in a preceding chapter, and in many other cases, it has been emphatically decided that the Federal Government has ample power to carry out the provisions of the Constitution relating to the regulation of commerce.

An objection often made to governmental ownership of railways, and which may be raised against the plan of National Consolidation proposed by the writer, is that

the United States Government could not obtain the land over which to build a new road, or acquire the real estate and personal property of roads now in existence, without the consent of the respective States in which the railroads may be situated. But it is submitted that under the fundamental principles of eminent domain this argument is not valid. The right of eminent domain is inherent in every sovereignty, from the nature of its being. A sovereign power cannot be conceived of which should be wanting in this great prerogative. It is essential to the thought of sovereignty, and extends to every subject wherein the government claiming it is sovereign. It is necessary to the very existence of a sovereign power, and, as Vattel says, it comprehends the subjection of the entire wealth of the nation to public uses if necessary. The right of eminent domain is not conferred upon the Federal Government by the Constitution in express terms, and it has been claimed, therefore, that that government has no right of eminent domain, or, if any, that it is subordinate to that of the States. But the *State* Constitutions do not in terms confer this right. As has been judicially declared, the right existed before the constitutions. The Federal Constitution, by implication, recognizes the existence of this great power in that government, and fixes a limitation upon it by requiring compensation to be made where private property is taken for public use. The right of eminent domain existing in the general government is of course limited to the spheres and purposes in respect to which that government is made supreme. To carry out any purposes or powers expressed in the Constitution as belonging to the general government, it possesses the

right of eminent domain to the fullest extent which any sovereign power can possess it. This subject has been frequently discussed by the Supreme Court of the United States, and this power of the general government asserted and maintained to its utmost limit. In the case of United States *vs.* Jones, reported in 109 U. S. Reports, p. 518, decided in 1883, that court says:

"The power to take private property for public uses, generally termed the right of eminent domain, belongs to every independent government. It is an incident of sovereignty, and, as said in Boom *vs.* Patterson, 98 U. S. p. 406, requires no constitutional recognition. The provision found in the Fifth Amendment to the Federal Constitution and in the constitutions of the several States, for just compensation for the property taken, is merely a limitation upon the use of the power. It is no part of the power itself, but a condition upon which the power may be exercised. It is undoubtedly true that the power of appropriating private property to public uses vested in the general government—its right of eminent domain, which Vattel defines to be the right of disposing, in case of necessity and for the public safety, of all the wealth of the country—cannot be transferred to a State any more than its other sovereign attributes; and that, when the use to which the property taken is applied is public, the propriety or expediency of the appropriation cannot be called in question by any other authority."

This decision determines merely that the United States has the right of eminent domain like other sovereign powers. It may be said that the exercise of this power is necessarily limited to land over which the

United States has sovereign political jurisdiction, such as that in the Territories, and does not apply to land within the boundaries of the States, which are themselves sovereign powers. That each State has the right of eminent domain over all the land within its limits not reserved or ceded to the United States is of course true, but subject to the modification of the paramount right of eminent domain in the United States Government for all purposes wherein that government is sovereign.

In the case of Kohl *vs.* United States, decided in the October term, 1875, and reported in 91 U. S. Reports, p. 367, the question was raised in the argument of counsel, though not emphasized, that the Federal Government had no power of eminent domain in the States. Mr. Justice Strong, in delivering the opinion of the court, which was unanimous on this point, said:

"It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the States for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the general government demand for their exercise the acquisition of lands in all the States. These are needed for forts, armories, and arsenals, for navy-yards and lighthouses, for custom-houses, post-offices, and court-houses, and for other public uses. If the right to acquire property for such

uses may be made a barren right by the unwillingness of property-holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of a State, or even upon that of a private citizen. This cannot be."*

The power to regulate commerce between the States is one of the prerogatives put in the sovereign control of the general government. Under the principle announced in McCullough *vs.* the State of Maryland, any legitimate means for carrying out this power is constitutional. The construction of a new national railroad would be a legitimate means within the constitutional powers of Congress, if Congress should determine upon the construction of such a road. So, too, the creation of a great consolidated company authorized either to construct a new railway system or to purchase all the railways of the United States would be a legitimate means within the constitutional powers of Congress. This precise question in principle has been determined by the Supreme Court of the United States in the California cases reported in 127 U. S. Reports, p. 1. The question was raised in those cases whether Congress had the constitutional right to create the Central Pacific Railroad Company and its connections. The court, in discussing this question, says:

"It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power *to construct*, or to author-

* Kohl *et al vs.* United States, 91 U. S. Reports, p. 371.

ize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National Road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course the authority of Congress over the Territories of the United States, and its power to grant franchises exercisible therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of State as well as Federal corporations." *

This decision, rendered in the October term, 1887, emphatically asserts the authority of Congress to create railway corporations not merely through the Territories but through the States as well. This same question

* 127 U. S. Reports, p. 39.

was before the court two years later, in the case of the Cherokee Nation *vs.* Kansas Railway Co., 155 U. S. Reports, p. 641. The sovereign power of the United States to acquire lands within the limits of the States was again emphatically asserted. The court says:

"The United States may exercise the right of eminent domain even within the limits of the several States, for purposes necessary to the execution of the powers granted to the general government by the Constitution. Such an authority, as was said in Kohl *vs.* United States, 91 U. S. p. 367, is essential to the independent existence and perpetuity of the United States, and is not dependent upon the consent of the States." *

As was said by Mr. Justice Bradley in Stockton *vs.* Baltimore, etc., Railroad, 35 Fed. Rep., pp. 9, 19: "The argument based upon the doctrine that the States have the eminent domain or highest dominion in the lands comprised within their limits, and that the United States has no dominion in such lands, cannot avail to frustrate the supremacy given by the Constitution to the government of the United States in all matters within the scope of its sovereignty. This is not a matter of words, but of things. If it is necessary that the United States Government should have an eminent domain still higher than that of the States, in order that it may fully carry out the objects and purposes of the Constitution, then it has it. Whatever may be the necessities or conclusions of theoretical law as to eminent domain

* United States *vs.* Fox, 94 U. S. pp. 315, 320; United States *vs.* Jones, 109 U. S. p. 513; United States *vs.* Great Falls Manufacturing Co., 112 U. S. p. 645; Van Brocklin *vs.* State of Tennessee, 117 U. S. pp. 151, 154.

or anything else, it must be received as a postulate of the Constitution that the government of the United States is invested with full and complete power to execute and carry out its purposes." *

A prominent Connecticut business man controlling large manufacturing interests and managing large investments in railroad securities objected to the plan of the writer that it seemed to him like practical confiscation of the roads. This is an argument very frequently made against any plan by which it is proposed that government shall acquire the ownership of the roads or that nationalization of the railways shall be adopted in any form whatever. It will be remembered that the plan proposed by the writer provides for a careful and as nearly as possible fair valuation of all railroad properties at their actual market value, for which payment shall be made in stock of the consolidated company, or, if that should be sold, payment should be made in cash. I presume that the objection is based upon the proposition to exchange stock of the proposed consolidated company for the stock of the various railroads instead of paying cash for them. But as this stock is to be guaranteed by the United States Government and would be equal or superior to government bonds, no injustice would be done to the holders of railroad securities. The objection, however, may have gone further than this and may have been based upon the thought expressed by President O. D. Ashley in the pamphlet entitled "The Stock Market and the Railway Problem." In discussing a proposition made by Prof. Richard T. Ely that the roads should be purchased by the government and a fair price paid, to be

* Cherokee Nation *vs.* Railway Co., 135 U. S. Reports, p. 656.

settled by arbitration, President Ashley, after conceding that the proposition would not be unfair if the government should elect to compel the sale of private property, says:

"But the difficulty of such schemes is in agreeing upon a method of arbitration satisfactory to both buyer and seller. On the one hand, the buyer is likely to stipulate that all valuations based upon the prospective profits must be ignored; and on the other hand, the seller attaches a value to this feature of the case which in arbitration would be difficult to estimate. In many cases these securities have cost the owners prices which they can only hope to realize by patient waiting, and in arbitration this element of hope would not probably be considered worthy of much, if any, consideration. And yet to pronounce stocks worthless which have a market value founded only on hope or expectation would be a gross and inexcusable injustice."

In this paragraph it will be seen that Mr. Ashley thinks it would be unfair to appropriate railroad property at its present market value, leaving out the anticipated or speculative value of the property. Certainly any plan of nationalization of the railroads should treat the private interests vested in these roads with full and complete justice. But no good reason can be conceived why they should be treated any more liberally or on any different measure of value than that which the law establishes in the exercise of the right of eminent domain in respect to other classes of property.

It is common knowledge that any piece of real estate, whether in the city or in the country, may be condemned and appropriated for uses of railway corporations, unless specially exempted by some statute of

the State. Any man's home or his business house may be condemned and seized for a railroad upon payment of the legally assessed damages, no matter how much value he may attach to it as his home, or how convenient it may be for his business uses, and no matter how much more he may consider its speculative value to be. The law only requires that just compensation or fair compensation should be made to him for his property. In estimating this just and fair compensation the element of hope or the speculative possibilities of the property are not considered except so far as they affect its present market value. The place may have been his home for a generation, and the dearest and tenderest memories of his life may have been associated and intertwined with every nook and corner of the premises. But for this the public cares nothing and gives him no compensation. He may believe, and may be abundantly justified in believing, that in ten years or twenty years the property will be enormously valuable. But he cannot obtain compensation for this element of hope except as it affects the actual market value at the time of condemnation. This rule is well established, and whatever hardship it may have effected or may effect in any individual case, it is the settled law with respect to all common real estate; but it is not so generally known that in theory this is also the well understood law with respect to all corporations and all corporate property, including railroads and their franchises and privileges. This question came before the Supreme Court of the United States for the first time in 1847, in the case of the West River Bridge Company *vs.* Dix, reported in 6 Howard, p. 507.

In this case the question was whether a toll bridge

erected and owned by a private corporation under a charter from the State of Vermont could be taken under the right of eminent domain and converted into a public highway. The court, after referring to the great importance of the case both because it was a case of first impression in that court and because of the wide application of the principles involved, laid down the principle that all property is held by tenure from the State, and that all contracts are made subject to conditions inhering in the social compact, among which is the right of eminent domain. The court says:

"Into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself: they are superinduced by the pre-existing and higher authority of the laws of nature, of nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur. Such a condition is the right of eminent domain."

In this case it was urged in the argument that the property could not be taken under the right of eminent domain because the valuable thing was the franchise, which could not be called property, under the old common-law idea "that it lay in grant and not in livery." But the court, in answering this argument, says: "This distinction, thus attempted, we regard as

a refinement which has no foundation in reason, and one that in truth avoids the true legal or constitutional question in these causes, namely, that of the right in private persons, in the use or enjoyment of their private property, to control and actually to prohibit the power and duty of the government to advance and protect the general good. We are aware of nothing peculiar to a franchise which can class it higher, or render it more sacred, than other property. A franchise is property, and nothing more. . . . A franchise, therefore, to erect a bridge, to construct a road, to keep a ferry, and to collect tolls upon them, granted by the authority of the State, we regard as occupying the same position with respect to the paramount power and duty of the State to promote and protect the public good, as does the right of the citizen to the possession and enjoyment of his land under his patent or contract with the State, and it can no more interpose any obstruction in the way of their just exertion. Such exertion we hold to be not within the inhibition of the Constitution, and no violation of a contract."

Mr. Ashley gives as an objection to the acquisition by the government of the railroads, or at least of the securities representing them, that "in many cases these securities have cost the owners prices which they can only hope to realize by patient waiting."

But here again there is no reason why railroad securities should differ from other property in this particular. It is the well-settled law that the jury, in assessing damages in proceedings for the condemnation of real estate, cannot consider the expenditures that have been made upon the property. Whether the expenditures were wise or the contrary, or whether they

were greater or less than the present market value, is not material. It is the fact with respect to many pieces of real estate, as it is with respect to many railroads, that the property could be replaced for much less than the money expended upon it. So that there is no justice or reason in insisting that railroad securities should be acquired by the government on any different plan or on any different basis of value than that which the railroads themselves have universally exercised in acquiring the property of private citizens. The true rule was laid down by the Supreme Court of the United States in the case of Boom Company *vs.* Patterson, 98 U. S. Reports, p. 403. In this case the court says:

"In determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The inquiry in such cases must be, What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted?—that is to say, What is it worth from its availability for valuable uses? . . . Exceptional circumstances will modify the most carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."

This is the well-settled law in the case of private citizens, and is just as well settled with respect to corporations. But the truth is that so far the rule has been applied most commonly to the rights of individu-

als, and the injustice done them was ignored for the sake of the public good. But now that it is contemplated to turn the rule against the railroad corporations a great outcry of wrong and injustice and confiscation arises. It is urged only that it is just and right to apply in acquiring railroad properties precisely the same principles which the railroads have been mainly instrumental in settling when for their uses they desired to acquire the property of private individuals.

These principles apply with peculiar force to railroad properties, for from time immemorial common carriers have been subject to public control. It was said by Lord Chief-Justice Hale, more than two hundred years ago, that when property is so used as to become affected with a public interest it ceases to be *juris privati* (of private right or ownership) only.

The Supreme Court of the United States in Munn *vs.* State of Illinois, 94 U. S. Reports, p. 126, citing this as the settled law of property since Lord Hale's decision, says, "Common carriers exercise a sort of public office, and have duties to perform in which the public is interested (citing 6 Howard, p. 382); their business is therefore 'affected with a public interest,' within the meaning of the doctrine Lord Hale has so forcibly stated." The court further says: "What they did was from the *beginning* subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the public good. They entered upon their business subject to this condition." *

There is surely no injustice in applying to railroad

* See Chicago, Burlington & Quincy Railroad Co. *vs.* State of Iowa, 94 U. S. Reports, p. 161.

properties the same principles which, as the Supreme Court of the United States says, have been "an essential element in the law of property," one hundred years longer than the United States has existed as a nation, and had formed a part of the Common Law for three generations before the Constitution was adopted.

The farm or house or store of every man in the land is and always has been subject to these principles of the Common Law. Is there any good reason why railroad properties should be an exception?

The objection is often made to government ownership of railways that the operation of railroads is a private business, and that the United States Government cannot constitutionally engage in private enterprises. It will be remembered that this is a strong point in the argument of the able editor of the *Railway Review*, which argument was discussed in the preceding chapter. It was there shown that the fundamental and essential thing is the public highway, and that with this is united the secondary function of a common carrier. As the United States has the unquestionable right to provide the principal thing, namely, the highway, it has also necessarily the right to use the highway in the method for which it is best adapted. This is an essential and necessary requisite to the successful performance of the powers and duties conferred upon the Federal Government by the power given it to establish highways as well as to regulate commerce among the several States.

But this question also does not rest upon inference or argument only. This identical objection was made against the constitutionality of the United States Bank in the case of Osborne *vs.* United States Bank, 9

Wheaton, p. 738. In that case the argument was made that the United States Bank was a private corporation, engaged in private trade for the purpose of profit, and consequently it was unconstitutional. It will be seen, therefore, that the objection raised nearly seventy years ago in the discussion in this case is identical in principle with the argument now made against the power of the Federal Government to create a great national railway corporation. In the case referred to, at the request of the Supreme Court itself, the question of the constitutionality of the action of Congress in creating the United States Bank was exhaustively re-argued by the most eminent counsel of the day, including at least four names of national reputation. These were Clay, Webster, Sergeant, and Wright. The opinion was delivered by Chief-Justice Marshall. Upon the point under discussion he said:

"The [United States] bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with government, is admitted; but the bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court, in the case of McCullough *vs.* the State of Maryland, 4 W. p. 316, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the

United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage."

It will be seen that the objection is not well taken, against either government ownership or national consolidation, that thereby the United States would be engaged in the business of furnishing transportation. As determined in the case above referred to, the fact that a national railway company would be capable of transacting private business as well as public affairs is not material. It would be nevertheless "a public corporation created for public and national purposes."

In this examination of Section 1 we have shown:

First, that the United States Government has the authority to create corporations.

Second, that it has the authority to create a great national railroad corporation, and that such action would not be unconstitutional, because the United States Government would thereby incidentally carry on the business of furnishing transportation.

Third, that the United States has the power of eminent domain to the utmost extent to which any sovereign power can possess it.

Fourth, that in carrying out any powers conferred upon the Federal Government by the Constitution, it may exercise the power of eminent domain within the States, just as truly and with precisely the same force

and effect as if the States were not themselves sovereign powers within their own spheres.

Fifth, that in acquiring the property of the railroads the same safeguards should be thrown around investors in this class of property as in other private interests needed for public uses, and that the same principles of valuation should be used as in the acquisition of the property of individuals.

The second section of the Act embodies the germinal thought of the writer's plan for National Consolidation, which is the creation of a great national organization that shall represent the governmental forces of the United States and the respective States, combined and working in unison with representatives of the private capital which owns the roads. This section is as follows:

"SEC. 2. The affairs of the said company shall be managed by a president, secretary, treasurer, auditor, and a board of commissioners, which officers shall be chosen as follows:

"The President of the United States, by and with the advice and consent of the Senate, shall appoint the president and six commissioners of said company, of which commissioners one half shall be selected from each of the two political parties polling the greatest number of votes at the last preceding presidential election. Each State, now or hereafter admitted to the Union, shall be entitled to one commissioner in said company, who shall be elected by the people of said State at a regular general election or selected in such other method as the legislature of each State may determine.

"The owners of stock in said company, under such regulations as may be prescribed by Congress, shall be entitled to elect as many commissioners as the several States in the aggregate are authorized to elect, but no person or institution shall vote, directly or indirectly, more than $10,000,000 of stock."

It will be seen that this section provides for a union of governmental with private control in the management of the consolidated company, a principle which the writer believes to be of the greatest practical value. By this plan the three great parties who are interested in all railroad operations are united in the management of all railways. The National Government is represented by the president and six directors or commissioners of the company; each State contributes one commissioner, to be elected by the people, and the owners of stock choose the same number of commissioners as are elected by the States, while, at the same time, to prevent the control of this corporation from passing into the hands of a few wealthy persons and to secure the distribution of the stock as widely as possible, a limit is placed upon the amount which can be voted upon by any person or institution. The railroads of the United States have become a mighty power, having a revenue more than double that of the government, and employing from six to ten times as many persons, directly or indirectly, in their operations. One of the greatest objections to direct governmental ownership of railways is that the power of the government will be thereby enormously increased and strong tendencies will be created toward centralization. It will be seen that this plan obviates this objection almost entirely; although the President of the United States appoints

the president of the company and a small number of the commissioners, yet this is the end of his authority, and as the president of the company would hold office for nine years as provided in Section 4, the executive department of the government would not be strengthened or the liberties of the nation endangered through any increase of the power of the President of the United States. The company would be, it is true, subject to the authority of Congress, but this could only be exercised constitutionally and in accordance with the act creating the company. There is in any country but little danger of usurpation by the legislature, and with the actual ownership of the railroads in the hands of private individuals there would be a powerful and sufficient check against legislative usurpation. Indeed, it is believed that the creation of such a great business corporation as is here suggested, governed partly by the people through their State organizations and partly by the people as owners of the stock of the company, would afford a strong counterbalance to any tendency toward centralization, and be in an important sense a check or balance wheel in our governmental system. The stock guaranteed as proposed would be widely distributed and held by great bodies of our people who would be interested in the preservation of good order and in the perpetuity of the present forms of our government. Such a corporation, created on the principle of the union of the Federal and State governments with private capital, would be based upon all the great forces of our nation, and, resting on the vast wealth and business of the railways, would be a power for harmony and stability. It would bind all parts of the nation together in one common bond of sympathy

as well as by the tie of material interests, and would engage all in the welfare and prosperity of each part of the nation. If any portion of the country prospered greatly all would partake in the prosperity, and if any section suffered hardship and loss temporarily all would participate, to the extent of the railroad interests, in their suffering and bear a share of the burden. I cannot conceive of any material force or power which could so effectually bind together and preserve this mighty union of States as such a beneficent and powerful corporation.

Full and careful examination has been given to the first and second sections of the Act, for the purpose of showing clearly that the proposed plan of consolidation rests upon a legal and practical basis. It is not proposed to discuss at length more than one or two of the remaining sections. With the exception of Section 6, the provisions of the proposed Act are not essential to the plan, and other methods would be equally suited to its purpose. Section 3 is as follows:

"SEC. 3. The president of the company shall be ex-officio chairman of the board of commissioners, and this board shall elect the secretary, treasurer, auditor, and an executive committee of five from their own number, of which committee the president of the consolidated road shall be a member and shall be chairman.

"All officers and regular employees shall be appointed for fixed periods of time, and shall not be removed or suspended from office during such periods except for mental or physical unfitness or for a criminal offense. No officer or employee shall be removed for political reasons, and in making appointments they shall as far

as practicable be equally divided between the two principal parties as shown by the last preceding presidential election."

In private correspondence an able critic and prominent railroad man has doubted the efficiency in administrative management of the proposed corporation on the ground that the board of commissioners is unwieldy from its numbers. But it is submitted that this objection was foreseen and provided against in Section 3. The board of commissioners is certainly not so large a body nor so unwieldy as the Congress of the United States, and the thought is embodied in the bill that this company should be to a certain extent set off by itself, and that the board of commissioners would practically constitute a legislative body subordinate to the Constitution and Congress but in its sphere legislating for the railroads of the nation. On the other hand, Section 3 provides for a compact executive committee of which the president of the company shall be chairman, which committee has executive management of the road and is small enough to locate the responsibility for the management of the road, a point of the utmost importance in any business or governmental matters. In the last clause of this section the attempt is made, by requiring fixed periods of time in the appointment of officers and regular employees, and providing that the appointments shall be equally divided between the two principal parties, to prevent the abuse of this great power by interfering in politics as an organization.

As will be seen from Section 4, the term of office of the president of the company is made to cover a little more than two terms of the President of the United States, and he is made ineligible to reappointment.

This is intended to remove the temptation to use the immense influence of his power for his reappointment and also for his election as President of the United States. By the last clause of the section it will be seen that all the officers are made ineligible to any political office during their terms of service and two years thereafter.

"SEC. 5. Said corporation shall have the power to sue and be sued in any court of the United States, but not of any State. And in any action at law or in equity the company shall be represented by its own attorney, and it shall be the duty of the district attorney of the United States to prosecute or defend for the adverse party, under such regulations for protection against vexatious suits as Congress may provide. It may hold, buy, sell, and transfer any real estate or personal property, but may not mortgage or in any way pledge the same except that the earnings of said company may be pledged as hereinafter provided. It may purchase, own, construct, and operate railway lines, using steam, electricity, or other motive power, and employed wholly or in part in interstate commerce. It may have all other powers implied by law or incidental and proper in carrying out the above powers, except that it shall not borrow money for any purpose.

"The private property of the stockholders shall be exempt from the debts of the corporation."

It is a common and well-grounded complaint against the present railway system that it is almost a mockery or denial of justice for a single private citizen to enter into litigation with a railroad corporation, however just his cause of action may be. The railroads are powerful corporations, controlling great aggregations of

capital. It is not a matter of difficulty with them to carry on a protracted and expensive litigation which would ruin most individuals. Moreover, in not only their general offices but in each county their practice is to secure, if possible, the ablest lawyers for their own attorneys, so that a private individual has but little likelihood of obtaining justice except as the prejudice of juries may sometimes come to his aid. By the provisions of this section the affairs of this corporation are taken out of local jurisdictions and placed under the control of the federal courts exclusively, and it is made an imperative duty of the district attorney of the United States to carry on all litigation against the company.

One of the most important and essential provisions of the bill is contained in Section 6, to which careful attention is invited. This section is as follows:

"SEC. 6. Every railway chartered or incorporated by the United States, or by any State, which shall, directly or indirectly, carry on interstate commerce after this act shall take effect, shall pay into the treasury of the United States a yearly tax equal to ten per centum of its gross receipts from all sources, which tax shall be a lien on the franchise, rolling stock, road-bed, and property of every description owned by such road, and may be collected by a sale thereof if unpaid for six months after the expiration of each fiscal year of said road."

It would be of little use to provide any organization, however excellent, for the consolidation of the railroads unless some influence could be brought to bear to induce its general acceptance. The effect of this section, if it is constitutionally enforceable, would be to compel all railroads doing an interstate business, wholly or in

part, to surrender their respective franchises and accept the provisions of this act. It is therefore of the greatest importance to consider whether Congress has authority to enact such a section. A full examination of the provisions of the Constitution, together with the decisions of the Supreme Court of the United States, would take greater space than can be here given. But in general it may be asserted that the authorities unquestionably sustain this position. A single case may be cited, namely, the Veazie Bank *vs.* Fenno, 8th Wallace, 553. It will be remembered the Constitution ordains that "Congress shall have power to lay and collect taxes;" also "to regulate commerce with foreign nations and among the several States." There is absolutely no limit to this power to lay and collect taxes, except that they must be "uniform throughout the United States."

The case above referred to grew out of the National Banking Act, under which a tax of ten per cent. was levied upon the circulation of the bank, which was a State institution. In the opinion in this case it is said that this power of taxation "extends to every object of taxation except exports, and may be applied to every object of taxation to which it extends in such measure as Congress may determine."

It was objected to the tax in this case that it was in effect a tax on a franchise granted by a State. To this objection the court replied, "It cannot be admitted that franchises granted by a State are necessarily exempt from taxation, for franchises are property, often very valuable and productive property, and when not conferred for the purpose of giving effect to some reserve power of a State, seem to be as properly objects of taxation as any other property." In the majority

opinion it is asserted that this power of taxation extends to the business of railroad companies as well as to financial institutions. In the dissenting opinion it is said, "No person questions the authority of Congress to tax the property of banks and of all other corporate bodies of a State the same as that of individuals;" and again, "It is true that the present decision strikes only at the power to create banks, but no person can fail to see that the principle involved affects the power to create any other description of corporations, such as railroads, turnpikes, manufacturing companies, and others," so that by the opinion of every member of the Supreme Court in this case, Congress has the right to tax railroads under this general power of taxation alone. It is true the question before the court related only to the taxation of a bank, but the principles laid down in the case, it is submitted, are conclusive with respect to taxation of railroads also.

But the second clause of the Constitution bears upon this question and seems to confer such a power by its own force in addition to the clause first mentioned. The "power to regulate commerce among the several States" leaves to Congress the discretion of how this commerce shall be regulated, and would justify the imposition of this tax under the second principle determined in the above case. This principle, stated in the syllabus, is as follows: "Congress having undertaken, in the exercise of undisputed constitutional power, to provide a currency for the whole country, may constitutionally secure the benefit of it to the people by appropriate legislation, and to that end may restrain, by suitable enactments, the circulation of any notes not issued under its own authority."

If Congress, under the section relating to currency, can levy a tax which makes it for the advantage of all banks incorporated by the several States to surrender their organizations and adopt the national form, certainly under the much stronger clause giving Congress power to regulate commerce among the States, the authority to tax railroads may be sustained.

It can be plainly seen that this tax enforced would compel the surrender of individual charters and the acceptance of the provisions of this bill. It may be objected, too, that this would work an injustice to holders of stocks in various railroads, but, as will hereafter be seen, this objection is without real force. Under provisions to be referred to later, the stock would be exchanged at its par value for the stock of the roads at their market value, care being taken to get at the real value of each stock. The experience of the past proves that this stock, based upon the vast property of the railway system of the United States, with its income pledged to pay the interest, and this interest further guaranteed by the United States, would, like government bonds, command certainly par and probably more than par, and be as salable as government bonds now are.

It will be seen on a little thought that this stock would be better secured than government bonds. The latter, in fact, rest only on the good faith of the United States Government. They have no tangible security back of them, set apart and definitely pledged for their payment. On the other hand, this stock of the consolidated company would have the same governmental basis of security to the extent of the guaranty of interest for one hundred years unless sooner paid, and in

addition it would be a first lien, except for bonded indebtedness not paid, on the entire railway system and business of the United States. A more solid and attractive investment than such a stock for all persons desiring permanent and absolutely safe securities could not be conceived.

In the case of government bonds, if a change in the form of government should be made, the new government could repudiate the bonded debt, and this is one of the serious dangers in governmental ownership, properly so called. So vast a debt would create a great temptation to overturn the government and repudiate the obligation. But in the case of the stock proposed, such a change would at most occasion only a repudiation of the guaranty of interest, an obligation so small as to create no peril to the government. It certainly could not be an injustice to owners of railway stocks to exchange them for such a stock as is proposed. The only question in the mind of the writer is whether it would not in the end be an injustice to the public. The stock runs for one hundred years unless sooner paid under the provisions of the bill, and it is probable that long before the expiration of that period the usefulness of the present form of railroads will be at an end except for the transportation of the heaviest and coarsest articles.

Sections 7, 8, and 9 provide for the method of surrender of old charters by the separate roads, the acceptance of the consolidation, the method of ascertaining the real value of each stock, and provisions for the issuance of the stock of the consolidated company in exchange for that of the surrendered company. Space will not permit special comment on these sections, as

they involve no principle fundamental to the scheme, but merely offer a method of carrying out these principles. These sections are as follows:

"SEC. 7. Every railroad in the United States, chartered or incorporated by any State or by the United States, may by vote of its stockholders elect to surrender its charter or articles of incorporation and be entitled to the privileges of this act. The proper officers of such company shall at once inform the secretary of the consolidated company of such election, and shall forward to him a full and complete schedule of the outstanding stock of said company and of its assets and liabilities of all kinds.

"But before consolidation shall be completed and stock of the consolidated company issued as hereinafter provided, said first-named company or companies shall be required to take up all floating debts of every kind, either by actual payment or by an agreement of the creditors to accept stock of the consolidated company at par in lieu of the actual cash value of their claims, the details of which agreement shall be subject to the approval of the executive committee of the latter company.

"SEC. 8. The secretary of said consolidated company shall thereupon inform the board of commissioners of such election, and they shall immediately proceed to ascertain as nearly as practicable the actual value of the stock of such road, and for that purpose the average market value thereof for twelve months prior to such application shall be considered *prima facie* its actual value, unless meanwhile its value shall have been changed by the issuance of bonds, the payment

of floating indebtedness, or other extraordinary circumstances.

"SEC. 9. When the market value of the stock of any railroad proposed to be surrendered or abandoned shall have been ascertained as above provided, it shall be the duty of the secretary of the consolidated company, under the direction of the board of commissioners, to issue to the proper officer or officers of said surrendered company the amount of the stock of the consolidated company equal to the market value of the stock of said first-named company, which shall be by said officers distributed to the persons entitled thereto.

"Thereupon, the consolidated company shall be entitled to all the franchises and rights of said abandoned company and to all its property of every description, and shall be liable for all its bonded indebtedness."

The following section, 10, provides for the rate of dividend, which is three per cent., payable quarterly, guaranteed by the United States with the pledge of the net earnings of the road.

Section 11 provides for the exchange of stock of the consolidated company for the bonded indebtedness which is due or which can be paid if not due. These sections are as follows:

"SEC. 10. The stock of said consolidated company shall pay a dividend of three per cent. per annum, payable quarterly, and no more, and said dividend shall be guaranteed by the government of the United States, and the net earnings or income of all the roads which may avail themselves of the privileges of this act shall be pledged to the payment of said dividend so far as needed for that purpose.

"If at the time of any interest payment the net income in the hands of said treasurer is not sufficient to pay the quarterly dividend due, he shall certify that fact, stating the amount of the deficiency, to the treasurer of the United States, and it shall thereupon be the duty of the last-named treasurer to pay the amount necessary to make up the deficiency to the treasurer of said company."

"SEC. 11. The secretary of said consolidated company, under the instructions of the executive committee, may issue stock of said company at not less than par for the bonds of any company or companies which may be incorporated into said first-named company, which bonds are or shall become due, or as to which an option to pay before maturity exists provided the holder of said bonds will receive said stock for the market value of the bonds, to be ascertained under such regulations as the executive committee may prescribe.

"Or said secretary may sell to the highest bidder for cash, at not less than par, the amount of stock necessary to take up all of said bonds. But no stock of said consolidated company shall ever be hypothecated or in any manner pledged to raise money for this purpose. Nor shall the franchises, road-bed, rolling stock, real estate, or any other property be subject to attachment for any debt, nor to execution issued on any judgment or decree, nor any other process from any court whereby it is sought to appropriate any of the rights, franchises, or property of said consolidated railway company, to the payment of any claim."

The last part of Section 11 prohibits any court from issuing process, either in form of attachment or otherwise, upon any of the property of said company to ap-

propriate the same to the payment of any debt. Under the decisions of the Supreme Court of the United States, it is probable that no process issued from any State court for this purpose would be held valid, and it is believed that a better method could be adopted to secure or enforce the payment of claims against the company than by ordinary judicial process. Such a method, perhaps not the best, is suggested in Section 12.

"SEC. 12. Whenever by the final decree or judgment of any court of competent jurisdiction it is adjudged that the consolidated company is indebted to any individual or company for any sum of money, the same shall be certified by the judge of the court rendering the judgment, attested by the clerk of said court with the seal thereof, to the treasurer of said company, and said judgment shall thereupon become a lien upon the net receipts of said company, and if more judgments than one exist they shall become liens in order of their rendition, and it shall be the duty of said treasurer to pay such judgments in their order as the net income of said road shall permit the same to be done."

Section 13 is as follows:

"SEC. 13. The board of commissioners shall appoint a committee of three persons, experienced and competent railroad men, whose duty it shall be to prepare schedules of traffic and passenger rates, which shall be on such a basis as shall meet, as nearly as can be estimated, the expense of operating and maintaining said consolidated road, paying dividend on the stock, interest on the bonded indebtedness, and such a further sum as shall provide a sinking fund sufficient to extinguish the bonded debt and stock within one hundred years."

This section develops one of the greatest practical

difficulties in this proposed consolidation, but it is not so great as might be supposed from experience in rate-making under the present system. It will be remembered that under this plan there is no conflict of interest between different lines, but the interest of any line is the interest and benefit of all. It will be seen that this removes at a single stroke all the greatest complications now existing in the matter of rates. It cuts out all difficulty under differential route tariffs and all competitive tariffs, and the only principle upon which rates need be based is to procure sufficient income for the demands of the consolidated road. It is not denied that it will be difficult to adjust these rates so as not to create too large a charge on traffic on the one hand and not to fall below the needs of the consolidated system on the other. But this is a simple question as compared with the present complications. Besides, in lieu of hundreds of rate-makers all over the country, each making rates for the interest of his own road instead of for the common interest of the public and all the roads, under this system there would be but one set of rates for all roads under the same circumstances and for the same class of goods.

One of the minor advantages of such a consolidation would be that railroad tickets would be good in any direction and on any line of roads in the United States. And again, it would not be necessary at any place to break freight because any particular road ended at that point. This would be a great saving of time and expense in the transportation of freight.

Section 14 provides a temporary organization to set the plan on foot. One point only needs comment, and that is, it will be noticed that it provides that Section 5

(which is the section taxing the gross receipts of the railroads) shall take effect one year after the passage and approval of the entire Act. This gives opportunity for preparation to enter into the consolidated system and for gathering statistics and other information with respect to the various roads. Section 14 is as follows:

"SEC. 14. The provisions of Section 5 hereof shall take effect one year after the passage and approval of this Act. And within thirty days after this Act shall take effect it shall be the duty of the President of the United States to appoint a provisional president, secretary, auditor, and treasurer, and six commissioners of said company, who shall hold office for one year or until the appointment and qualification of their successors, but not more than two years.

"The secretary of said company, under the direction of the President of the United States, shall invite the governor of each State to appoint a provisional commissioner with like terms of office as above, and the secretary shall also invite the presidents of an equal number of the principal railroads in the United States to select each one commissioner. If the governor of any State or States or the president of any railroad shall neglect or refuse to appoint such a commissioner within thirty days, it shall be the duty of the President of the United States to appoint commissioners to fill such vacancies. The officers and commissioners so appointed shall be the provisional incorporators of said company, and it shall be their duty to prepare statistics of such companies as may determine to accept the provisions of this Act, and to do and perform such further acts as may be necessary and proper in carrying forward the purposes thereof."

The plan set out in this proposed Act is not intended as an attack on the railroads, nor is it inspired by any hostility to private capital invested in these roads. Nor is it supposed that the plan is perfect. But it is evident to every thoughtful man that there are very serious difficulties in our present railway system, and that consolidation in some form is inevitable. And it is believed that the thought at the bottom of this plan, which is a combination of private capital with the people, represented through their State and national governments, affords a safe and practical remedy for these defects and evils.

CONCLUSION.

HAVING accomplished the task proposed in the inception of this work, so far as the limitations of the original plan will permit, the writer asks careful and considerate attention to his work, not for its own merits, but because of the transcendent importance of the subject he has undertaken to discuss.

In common with all who have given serious thought and labor to the study of this great subject, the writer has become most deeply and profoundly impressed with the magnitude and perplexity of the railway problem, and with the vital necessity and inestimable value of its right solution. Some just and satisfactory settlement of the political and economic questions involved in this problem is absolutely essential to the preservation of equal rights for all the people, and the conservation of commercial and political liberty.

The Sphinx of olden times devoured those who could not rightly answer her riddles.

The railway system of this country is a Sphinx whose problems must be solved by the nation, or all true national life will be swallowed up.

The writer believes that the following conclusions have been made clear:

First, the plan of National Consolidation is in accordance with law and the Constitution of the United States. This has been shown by many decisions of the Supreme

Court of the United States. Many more could be added if necessary.

Second, it is entirely feasible and practical. We have seen that Mr. C. P. Huntington, one of the most able and experienced railroad men in the country, advocates the formation of one corporation to own and control all railroads.

Third, it recognizes that consolidation in some form is certain and inevitable, and seeks to turn this irresistible tendency into right channels. It shows how consolidation may create a great public corporation, which shall be a minister of good to all the people instead of a vast monopoly oppressing all.

Fourth, it is just to all interests; preserving and maintaining all real rights of private investors as well as those of the public, which are just as real though not so well understood nor so readily conceded.

Fifth, it will remove all the dangerous conflicts and all the elements of irritation and enmity between the railways and their employees and the public, which now constitute a most portentous peril to our national security and good order.

Sixth, it will do away with the greatest sources of waste and loss under our present system, and reduce the cost of transportation to the lowest figure, thus satisfying the necessary and inevitable demand for the reduction of rates.

Seventh, it will remove the unjust inequalities and the unrighteous discriminations now prevailing.

Eighth, it will entirely and forever destroy all rate-wars, with their vast waste and disturbance of values and of business, and will make rates steady, uniform, and low.

Ninth, it will do away with all strikes and dangerous riots on the railroads, because it will remove their underlying and inciting causes.

Tenth, it will bind the different sections of the nation together by the strong tie of common ownership and control of the united railway system. As the different localities of the country increase in power and wealth, the forces tending to disrupt and break up the national organization will necessarily become more and more powerful. The problem will be to find some centripetal force to counteract this tendency without involving a perilous increase of the political power of the Federal Government.

A great railway corporation uniting all the railroads of the land, and owned and controlled by the people, as proposed under the plan of National Consolidation, would constitute a force making for cohesion and union with almost inconceivable power.

Eleventh, it will furnish a vast and safe foundation for all the great banking and financial institutions of the country in the stock of the consolidated company, will protect investors in railway securities by making their investments as solid and permanent in value as government bonds now are, and will make a perpetual end to gambling in railroad securities, with its unrighteous practices and evil results.

Twelfth, it will take railways wholly out of politics and remove the corruption now so common and so dangerous.

Thirteenth, it will dignify all railroad duties and elevate every class of employees to a higher plane of manhood as free, unfettered American citizens, to the great advancement of our social and economic condition.

Oppressed with the immensity of the problem, but thrilled and inspired by the glorious possibilities of good for all the people which are sure to come from a reorganized and redeemed railway system, the writer lays down his pen with the hope that this discussion may contribute something toward a right understanding and a just solution of the great problem.

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